No. 79-176

In the Supreme Court of the United States

BETTY OSWALD, on her own behalf and behalf of others similarly situated, and **PHIL MILLER** and **EILEEN MILLER**, on their behalf and on behalf of others similarly situated and **SKOKIE CENTRAL TRADITIONAL CHURCH**,

Petitioners,

vs.

GENERAL MOTORS CORPORATION,

Respondents.

SUPPLEMENTAL APPENDIX

CHARLES A. BOYLE
77 West Washington Street
Chicago, IL 60602
(312) 368-1060
Attorney for Petitioners

Of Counsel:
LAWRENCE A. WALNER
WILLIAM J. HARTE
FRANCIS E. GOODMAN
ABRAHAM N. GOLDMAN
MICHAEL D. BUCHWACH

The Scheffer Press, Inc.—(312) 263-6850

INDEX TO SUPPLEMENTAL APPENDIX

SUPPLEMENTAL APPENDIX

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN THE MATTER OF:

GENERAL MOTORS CORPORATION
ENGINE INTERCHANGE LITIGATION.

Multidistrict Litigation No. 308

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the HONORABLE FRANK J. MC GARR, one of the Judges of said Court, in his courtroom in the United States Courthouse, at Chicago, Illinois, on Thursday, June 14, 1979, at the hour of 2:00 p.m.

PRESENT:

MR. CHARLES A. BOYLE

MR. WILLIAM HARTE
(77 West Washington Street, Room 300,
Chicago, Illinois 60202);

MR. LAWRENCE WALNER
(221 North LaSalle Street, Room 1748,
Chicago, Illinois 60601);

MR. ABRAHAM N. GOLDMAN
(105 West Adams Street, Room 2370,
Chicago, Illinois 60603);

MR. CHARLES E. CLARK
(903 Frank Nelson Building,
(Birmingham, Alabama 35203);

MR. DONALD G. MULACK and
MR. MICHAEL BENEDETTO
(228 North LaSalle Street, Room 1242,
Chicago, Illinois 60601);

MR. MICHAEL D. BUCHWACH
(Grant Building
Pittsburgh, Pennsylvania 15219);

MR. ROBERT BULLOCK
(Asst. Attorney General
Commonwealth of Kentucky
209 St. Clair
Frankfort, Kentucky 40601)
appeared on behalf of the plaintiffs;

KIRKLAND & ELLIS

BY: MR. THOMAS A. GOTTSCHALK,
MR. STEPHEN C. NEAL and
MR. JAMES D. ADDUCCI
(200 East Randolph Drive,
Chicago, Illinois 60601)

and

MR. LOUIS H. LINDEMAN, JR.
(Office of General Counsel, General Motors
Corporation,
Detroit, Michigan 48202),
appeared on behalf of the defendants.

The Clerk: MDL Docket No. 308. In the matter of General Motors Corporation Engine Interchange Litigation. For a status hearing and motions to be heard.

The Court: Good afternoon, gentlemen. Who wants to be admitted for the purposes of this hearing, Mr. Bullock?

Mr. Bullock: Yes, your Honor. I have made the motion to intervene for the purpose of being heard to insure that if the Court should decide that consumers should be paid that Kentucky, even though it has not settled the case, be included.

As I understand from talking to Mr. Gottschalk and some of the plaintiffs here there is no objection to that so I probably do not need to be heard.

The Court: You may be admitted to this case for the purposes of this hearing and I will hear you on it.

Mr. Bullock: Thank you, your Honor.

The Court: What we have to start with is a motion for leave to communicate an offer of settlement. We have a proposed form of communication. I have some objections, including a comment by Mr. Boyle and a comment by Mr. Walner, and a few other things that show up on the agenda here. But for a start, would you tell me what the current status of the matter is on the motion for leave to communicate. Has there been any change other than the objections you have here or are you riding with your motion on the form you originally tendered?

Mr. Gottschalk: We are riding the form we tendered with the exception of one additional paragraph which we submitted to the Court and the parties this week relating to the subsequent filing of the so-called transmission litigation pending before Judge Crowley. We suggested a paragraph that mentions it so that class members are apprized of it even though there has been no certification of the class in that other matter. But with that one exception General Motors is asking for approval of the form of notice as proposed. We are aware of objections filed by Mr. Boyle. We are aware of a proposed statement filed by Mr. Walner for inclusion, and we are aware of a paper filed by the Illinois Attorney General indicating that he had no objections to the form of notice that we have proposed.

The Court: All right, I have that as well.

Excuse me, Mike, I don't seem to have—I don't know whether you have this last paragraph on the transmissions—

Mr. Gottschalk: I have a copy.

The Court: May I see a copy of it, that hasn't come to my attention somehow. The mail is piled pretty deep —all right, Mr. Walner's objection—may I keep this copy, is it an extra one?

Mr. Gottschalk: Certainly.

The Court: Mr. Walner's objection, let me address myself to that first.

He thinks that the form of notice should give a little more of the flavor of the Court of Appeals decision, and he offers a proposed addition to the notice, which among a variety of other things, does make that point. I wonder, and what I would like to hear now from Mr. Gottschalk is whether at least the first paragraph of his proposed edition should not be considered for inclusion—do you have that before you?

Mr. Gottschalk: Yes, I do, your Honor.

The Court: The rest of it I think I have some negative reaction to because it is largely argumentative, but in terms of stating the facts, that the approval of the settlement for the entire class, et cetera, that one first paragraph seems to be certainly a fair and accurate factual statement, and my question is whether that should be part of the communication.

Mr. Gottschalk: We have no objection to that paragraph or words similar to it being part of the notice.

The Court: All right, I would intend then that that should be included.

Anything else—Mr. Boyle, what do you have to say about all of this, I have your pleading, of course—

Mr. Boyle: On Mr. Walner's proposed additions to the notice?

The Court: Yes.

Mr. Boyle: Well, I would suggest that the content of the proposed addition is—

The Court: Well, of course, you make your own point in your own objection that you think that there should be a fuller description of the Court of Appeals opinion—

Mr. Boyle: Do you mind if I remain seated, your Honor?

The Court: Not at all, go ahead.

For the same reason that I reject that suggestion, of Mr. Walner's part, and he makes it in some detail, I reject it on your part. I don't think the reasoning in the Court of Appeals decision is appropriate in the notice but I do think the fact of the Court of Appeals decision and a fair descriptive statement of it should be there.

Well, let's put it this way. I am ready to approve the General Motors form of notice with additional paragraphs of Mr. Walner's, subject to any further argument that anybody here wishes to make. So let me say that the burden of proof is on the objectors and I am ready to hear you. I have already indicated and I don't think you have to reargue that any detailed description of the opinion or the rationale in the Court of Appeals is appropriate, I don't think it is and you have made your record and your proposals on that.

Is there any other objection to the text of the offer as now proposed with the addition we have talked about that anyone would like to make?

Mr. Walner: Your Honor, do you intend to permit the release in its present form to go out—I think we have raised the matter, perhaps not in these papers so far, but repeatedly in the proceedings that the case was originally conceived as limited to an engine switch, and that the release is broader and as the case progressed it seemed to pick up the engine train along with it.

The Court: Your suggestion then is that the form of the release has to be modified to encompass that?

Mr. Walner: Yes, your Honor, they are asking the class to release a right that was probably not the subject of the publicity, and not the subject explicitly anyway of the original compliance.

The Court: I agree with that, that the transmission or the drive train was not part of either the publicity or the case, nor in my mind did we ever try anything but an engine case, and I think I made that clear rather frequently. Mr. Boyle felt that transmissions were an issue and I didn't and he tried hard to get it into issue and I tried hard to keep them out. I still think that we are talking here about an engine interchange case and transmissions don't belong in it. I am sure my attitude in that matter and the way I handle it is one of the reasons why a separate transmission case has been filed. So in settling this, or getting out a notice of a possible settlement offer, we are talking about an engine interchange case and I am not adjudicating the transmission issue at all.

Now does the form of the communication to the class fairly represent that, in your mind—either one of you, Mr. Gottschalk?

Mr. Gottschalk: Just to speak to that question—the release which was part of the consideration, negotiated with the State Attorney Generals and therefore part of the settlement offer does cover other components in the 1977 cars, including transmissions, and the notice makes it clear that they are releasing claims with regard to substitution of any engine components manufactured by General Motors or included in the '77 cars. So they are alerted to the fact that the release would broadly cover such claims, and with the additional paragraph we refer to the only litigation we are aware of which might possibly be affected by that release.

The Court: Well, the question that arises is whether in what I have said flatly was, is, and always will be an engine case, whether we can sneak into the release something broader than the engine and include the drive train.

The proof of the adequacy of the settlement and everything else was limited to the engines and when the attempt was made to bring the transmissions into issue I kept it out because it wasn't part of the complaint.

Mr. Gottschalk: Your Honor, my first response to that is that if the only case before your Honor was engines, as it is, and we went to the State Attorneys General and there was a dispute about transmissions, and whether they had substituted, we had entered into an agreement with the Attorneys General regarding transmissions.

Now we understood this case to be limited to engine interchange issues. Those were the only issues certified. In our negotiations with the Attorneys General, they were concerned about other aspects of the car and consideration negotiated and agreed to buy GM was in consideration of a release that would cover the various components used in any 1977 model automobile. I think the function of this Court is to be sure that the release and the notice are appropriate for the engine interchange case, but in any event, this Court should not exercise jurisdiction over that portion of the agreement that relates to matters not in issue before this Court. The appropriate thing, I think, for this Court to be concerned is that the release is adequately described in its scope in the notice so that consumers are aware that it may reach claims other than those that are pending before the Court. And we made a conscientious effort to be sure that it does put class members on notice of that fact.

The Court: I have the motion for leave to communicate offer of settlement, and of course, the text of it is basically the form of the communication or notice and I have it dated and received March 7, 1979. I assume this is the final and appropriate form that I am working with.

Mr. Gottschalk: Yes, your Honor, with the addition of that one paragraph.

The Court: With the addition of a single paragraph—well, I read in it, in the form of a notice, first at the bottom of Page 2 in the notice form:

"Plaintiffs are also asserting that General Motors substituted other power train components, including transmission and rear-drive axles."

My question is, why is that in here, that isn't what the plaintiffs asserted in the complaint and that isn't what the proof considered.

Mr. Gottschalk: Your Honor, that was in there as a matter of caution, perhaps undue caution. We knew that the objectors were pressing on this Court and the Court of Appeals that an element of this case should at some time be the question of transmissions, and we thought we should err on the side of overly full disclosure rather than omit some aspect of their claim, even though it has not been accepted by this Court as an appropriate claim to be presented in this case. That is the reason it is in there.

I might also add, your Honor, that I think it is appropriate to have reference to that allegation since the mechanical insurance coverage, at the top of Page 4, is described as covering the power train. That was part of the consideration with the Attorneys General and it included engine transmission and drive axle.

Over on Page 5, on effects of signing a release—it is clearly pointed out that they would be releasing claims arising out of the installation, incorporation and use in any '77 model automobile sold by GM related to any engine component part or assembly produced or manufactured by any division or subsidiary of GM.

So what we are doing is saying there is a latent claim in this case which plaintiffs are asserting about transmissions. That obviously does not bind this Court or us that it is appropriate for inclusion in this case, but they should know that it is there, they should know there is litigation regarding it, and they should know the effect of the release on it.

The Court: All right, let me ask the various plaintiffs then. Is it General Motors' contention that the references that I have called attention to, to the transmission and

power train assembly, are there in an effort to make more full and complete the notice and the adequacy of the notice to the people who are going to receive it. Do any one of you object to its inclusion—I am willing to leave it in, I just didn't think it was necessary, I am not sure it is appropriate but if General Motors put it in and if the various plaintiffs want it in, it is fine with me.

Counsel, what do you have to say about that?

Mr. Harte: William Harte, your Honor.

The difficulty in this case, particularly on appeal, was to identify just what was at issue at the trial level. And in the objections before the Court, this Court, one of the principal issues was that if it is an interchange litigation, engine litigation case, then the only thing that should be released should be the question of the engine interchange. And the fact that these drive train components were being thrown in is something that was never being contemplated either by the attorneys that negotiated the settlement or at least by the plaintiffs counsel who was seeking to overturn the settlement before the Court when the Court gave its initial approval. Consequently the simple answer to it is to either resist sending the offer of settlement to the class with both of these elements in it, or if the notice of offer of settlement is going to the class, that it concern only the matters at issue in this case. Now again, we urge again, of course, plaintiffs counsel are not part of the negotiations so the statements made by Mr. Gottschalk haven't been tested by any adversary proceedings, but again the simple answer is if it is the Court's approach to this case that the drive train components are not part of it, why is it in the release?

The Court: You contemplate that the release would be a surrender by the person signing it of a right to be a member of the plaintiffs' class in the transmission case?

Mr. Harte: Absolutely.

The Court: Mr. Gottschalk, do you agree with that?

Mr. Gottschalk: Your Honor, we cannot tell at this stage of the proceeding in the transmissions litigation because they are alleging that substitution of this THM 200 transmission for a 350. If it is simply a matter of divisional source selection, then I agree it releases it. If they are claiming some defect in the transmission then the release is clear that the release does not reach defect. There has been no determination of that.

The Court: Since I contended in the beginning that I was not trying any transmission issues I don't think any release should release rights in connection with a transmission claim.

Mr. Gottschalk: Your Honor, I have to step back and explain the context of where we're at in light of the Court of Appeals decision as we see it.

The release was not negotiated solely with respect to this action. The release was negotiated primarily and principally with respect to claims arising out of General Motors selection of various components in its 1977 cars. That release does not intend, as a settlement now of this case. We are settling disputes between ourselves and State Attorneys General. We have a right in that negotiation to settle them as broadly as we want, and in the absence of a class action which has before it all the issues affected by that release I think a class action Court has to be consulted only with respect to those matters being affected by the release where the class has been certified and the issues have been certified. So we are here because we are releasing claims in this litigation, and by this Court modifying the agreement of the Attorneys General in striking out sections of that to make it conform to this litigation the Court would actually be reducing the agreement as though it were a settlement of this action rather than a broader settlement, part of which impinges on this action.

Finally, your Honor, that is such a fundamental point for us and it would so vitally effect the consideration we received in that offer that I would have to say that I would

have to go back to my client and consult whether it would extend the offer if the release was limited solely to the engines.

The Court: I understand your position and I think it is reasonable from your point of view. I'm a little troubled by it though—more than a little—the fact that we had extensive hearings as a result of which I found that the settlement offer—I forget the words I used, fair or something of this sort. It was an offer that I thought was worthy of proposing to the class, as a matter of fact, enforcing on the whole class, put some sort of an imprimatur of the Court on the fairness of the settlement as a result of the hearing and listening to the evidence and listening to arguments and making a determination. I didn't make any determination of the fairness of any release or any settlement as it involved transmissions. I would suspect that a member of the plaintiffs class might say, there has been a hearing and the Court has found the settlement to be sufficiently fair, that it should be proposed to the class, and the person saying that would be in the instance of the transmission section of the release, a settlement relying on something that never really happened. That aspect of it troubles me. The cure to that I suppose would be if the form of notice adequately explained and differentiated between the fact that the engine aspect of the case, the engine interchange cases, the issue before this Court, is the issue concerning which the fairness of the settlement hearing was concentrated on and the issue concerning which basically the settlement offer is being sent out. But you should note, and if it adequately says this I would be satisfied with it, that in the release you were releasing your claims and withdrew the drive train as well which was not an issue in this case.

Do you think the notice adequately says that?

Mr. Gottschalk: I think I would be personally receptive to that sort of change because I think it may make that point clear in a way that it is not clear presently, it is really not addressed.

The Court: I think a lawyer might find it in there but I don't think the average person reading it would and I would really like to see it stated in there.

Mr. Gottschalk: I think your Honor, we can try to submit language on that. Two points, one, of course, the release was before the Court of Appeals and it indicated that the Court ought to consider having the offer go out and secondly, because of the Court of Appeals decision the notice now is totally neutral so that there should be no inference as to any finding of fairness or adequacy of any part on the release. I do agree that that part of the language would be factually correct and I would have no problem of seeing it incorporated.

Mr. Walner: Your Honor, I think we really do have a serious due process question raised, whereas your Honor framed part of it—there is a Court imprimatur put on a hearing, and permission of the settlement offer to be made, even though to all of the individual members of the class, I am not sure that the class members are going to be capable of making that distinction merely by an explanation. I submit, your Honor, that it is not proper to submit an offer based upon a hearing that did not include part of the matters the people are asked to release. The people are given no advice on the value of the engine train itself, and the transmission. They are entitled to be informed as to what the value of that is, and I think they are entitled to have the Court consider whether the offer being made falls within a threshold of fairness that should be submitted to the class. I think by the disclosures that have been made and the colloquy we have had between counsel and the Court here, it is very clear that there is a large area about which the class is simply wholly uninformed. I think that is not the context in which any class member should be asked to accept an offer or to evaluate an offer. Of course, we believe also, your Honor, that that in some measure goes to the engine aspect of the case as well. I don't want to reiterate the arguments that were made on the rights of class counsel to communicate with

the class members. We certainly think that they are entitled to advise their class members what they as appointed counsel recommend that they do and why with specifics.

The transmission aspect goes many steps farther. Not only are they denied any communication from their counsel, they are denying having had the Court have the benefit of any consideration as to the value of the transmission. They are denied any information on which to make a judgment on the basis of the value of that release. They couldn't take this offer to any lawyer and get any explanation as to whether they ought to accept this offer or not because even a lawyer looking at this offer, your Honor, wouldn't have the facts before him even on the engine, let alone on the transmission.

The Court: The settlement of a lawsuit, Mr. Walner, of any kind, class or individual, is a compromise which is based upon the recognition of the parties of the position they have at the time the lawsuit is instituted. It isn't a settlement that is arrived at after all of the evidence is spread of record and everybody has taken advantage of access to that information. I think the settlement is one where the automobile owner has got to decide, knowing that he does not have to accept a settlement, am I willing now on the basis of the car I am driving and the engine I have got, knowing what the claims are and knowing what the defenses are, fully to accept this just to get out of this litigation and get my money or do I want to see it through to an ultimate determination of the issues.

And therefore the settlement cannot communicate all of the details of the litigation that have been developed so far. We are just making the individual, the attorney the judge of the case after all of the evidence is in.

Mr. Walner: Your Honor, I am not suggesting that that be done. What I am suggesting is that the individual class member is never told what the possibilities are even claimed to be for recovery. He is given an alternative of $200 and no information. It is not like a securities case where a person knows what he overpaid for the stock or

what is claimed to be overpaid for the stock. And he can figure some limited number of damages, and even in those areas you would have a problem. Here a man is given a choice of $200 without being given any idea in the world what the upper limits of his claim may be.

The Court: That is because nobody has any such idea even in your letter nor in Mr. Boyle's, some much higher figure is mentioned, the upper limit, and I forget what it is, but it is a very high figure. That has no more basis in fact than does the $200 in terms of being an assessment of actual damages. It isn't that, it is a settlement, a compromise. I couldn't approve sending out a letter to the automobile owners which said, if you hang in in this case you may recover up to 2,000, or whatever your figure was. I have no idea whether that figure is realistic.

Mr. Walner: I am not suggesting that that be the context of it, your Honor. But he is entitled to be told what the staunchest opponents of the offer believe is possible, even the upper limit. He is certainly entitled to be told and should be told that he may get nothing, yet he may get somewhere in between the upper limit. But he should have some idea, your Honor, what his alternative is. It shouldn't be a vacuum, it shouldn't be $200 or "Guess what" because against the "Guess what" nobody is going to take "Guess what." But many people may take a chance at what they think is a possibility of an upper limit. They are entitled to that choice. I put myself in the position, your Honor, of sitting down with a non-class plaintiff and trying to advise him, if I am given an opportunity of face-to-face advice.

Now I would dare say that if I advised the client of his offer of 200, you decide whether you want to take it and didn't advise him at all what his rights were on the up side, I might very well be the victim of a malpractice claim with that kind of advice. I am suggesting that it is improper not to advise him of the possibility of what he may be able to realize and tell him he may be able to receive anywhere from zero up to that maximum contention. And the Court doesn't endorse the maximum contention, but the zealots, if you want to call them that, believe that that is within the grasp of possibility.

Mr. Gottschalk: Your Honor, I have some suggestions to make that I think would improve the posture of the notice given the contentions of the parties, the objections that we have had served on us in the last two days.

First of all, from the due process standpoint, we have tried to set forth the contentions mentioned, the allegations of transmission switching, which are not part of this case but which are now being made, and to give that information to the consumer. There have been two other suggestions made with respect to what might be done to meet the contention. The objection being stated here that there is not enough opportunity for interested class members to find out more about the prospects of their claim. One is to include at the end of the notice the name and address of counsel, both for the proponent and the objectors of the settlement. I would endorse that, your Honor, as a good objection given the position of the objectors so that there can be further communication and inquiry if the class members desire to have that.

Second of all, your Honor, if this is a matter of real concern although I don't think it need be in light of the balance that is presently in the notice—I came here today not prepared to object to some more balanced statements of position by the objectors to the settlement so long as there could be some rebuttal statement by the proponents. Now obviously this came so late there was no chance to do that and I have much objection with what has been submitted, but I think the alternative, at least in providing the name of counsel so that if people do wish to know more, if they could talk to them directly, that is fine with us. What we want primarily is to let people make their own decision, if they want more facts, give them a source where they can find them out.

The Court: The description of the litigation at the bottom of Page 2 is about as bare-boned as it can get,

there is no question about that. You can say in one respect that makes it neutral. You can say in another respect, however, that it is susceptible to Mr. Walner's objection that we are, in terms of balancing the $200 against the possibilities in the litigation it does not give the individual trying to make the decision much help.

I agree with including the name and address of counsel in permitting inquiries to counsel which can be answered any way a good lawyer thinks he sees fit to answer. I see no problem with that and I think it should be done. If you would like to attempt to flush out the description of the litigation a little bit to give both parties position a little more fully I will be happy to see you do that. On the other hand I don't want to turn this into a pro and con closing argument, which I think is wrong. I don't think that the statement of counsel that if pursued to a successful conclusion this litigation might produce $10,000 or whatever that figure is. I don't think that kind of statement or a dollar amount should be in there. It certainly can be said that certain attorneys for the plaintiff class feel that if pursued to a successful litigation the recovery would be significantly higher than $200. But if you put a figure on it I think you are pulling one out of the hat with no basis for adjudication, or no adjudication of the figure or no basis in evidence for what it might be.

Do you want to take a shot at a revision of it—these are the things I have in mind, if we modify the release and the language describing it to segregate out more definite the transmission concept. If we add Mr. Walner's paragraph in his letter which I mention earlier, and to give a little more detail and description of the litigation indicating the objectors position a little more fully and finally, including the name and address of counsel for the plaintiffs' class who are objecting and who may be contacted. I think with those things in it we may have a form which would be one that I would be much more likely to agree with.

Do you want to take a shot at that—why don't you do it—well, I was going to say why don't you try and do it jointly. The trouble with that is that when you get through Mr. Walner and Mr. Boyle, because they had some very fundamental objections, are going to have to make a record on those in any event. So maybe we'd better do it the same way you did before. You take X number of days to submit a revised form and take the same number of days to write letters objecting to it and we will have another hearing just as soon as that process is through and perhaps come up with a final approval, ten days or less—

Mr. Gottschalk: Less.

The Court: Let's make it five days, better give them ten because by the time they compose letters and mail them it will be that long before I get them and have a chance to read them. Five days to circulate a revision of the communication to the offer of settlement and the form of notice and the release, and within ten days I would expect to receive by mail any objections to it, and let's set another hearing at the end of the 15 days and see if we can—let's set the hearing for 2:00 o'clock on Tuesday, July 3rd.

Mr. Boyle, you have problems with that date?

Mr. Boyle: Your Honor, I will tell you why, your Honor, there is some discussion as to when we are going to celebrate July 4th, and July 4th I believe is the Wednesday, and then preceding is that Tuesday—some offices are off Monday—

The Court: How about Thursday the 5th. We are not going to be celebrating it after the 4th. Let's make it the 5th.

Mr. Gottschalk: That is my birthday, your Honor, I will be happy to celebrate it here.

Mr. Clark: If the Court please, while I am here on behalf of the people who are proponents of the settlement, my problem is I have a case set on the 5th.

The Court: Well, do you get the sense from the way things are going that I am a proponent of the settlement too—I think I can adequately take care of your position. I think the Court of Appeals has told us if we put it on an optional basis we can settle it. We are trying to get a fair form here and I think once we do it should be obvious to you that when I get a form that sounds what I think are the objectors genuine concern, it should go out. That seems to be a good day, I hate to change it, but I will if you insist.

Mr. Harte: Your Honor, two further points—

Mr. Gottschalk: If we are moving to a new point I would like to come back for a clarification—

The Court: Let's take care of the old point first. You are talking about the intervention now?

Mr. Harte: No, your Honor, I'm talking about the notice of offer of settlement, and its contents.

The Court: All right.

Mr. Harte: It does not include any recitation with respect to the payment of attorneys' fees. That is completely silent in this offer of settlement. I don't know what negotiations may have been entered into between General Motors—and I don't know how that point is going to be clarified, or whether the proposed offer of settlement is going to comment on it since the earlier offer of settlement did include it.

The Court: The earlier offer of settlement indicated the attorneys' fees had been agreed to independently and would not reduce the amount of settlement.

Mr. Gottschalk: Yes, your Honor.

The Court: Is a similar statement appropriate in this notice?

Mr. Clark: It has not.

Mr. Gottschalk: That would be an appropriate statement.

Mr. Clark: I think it would be appropriate. I talked with both Mr. Neal and Mr. Gottschalk, and the agreement among those counsel who, or their clients who I presume will accept the settlement offer if communicated to them, is in force and probably should be included in this.

The Court: I think a sentence describing that similar to the one in the last notice is appropriate. Let's put that in.

What do you have, Mr. Gottschalk, before we go on to anything else?

Mr. Gottschalk: On the release, your Honor, I just want to be clear. The concern of the Court is to make it clear as to the full scope and effect of the release and that it would cover things other than engines?

The Court: Make it clear first that this is an engine case, the issues adjudicated related to engines, the release is broader than the issues in this case and you want everybody to clearly understand that it includes the drive train release as well.

Mr. Gottschalk: Thank you.

Mr. Harte: The other thing I was going to bring up, your Honor, is whether the Court has passed on the question of the ability of class counsel to communicate with the class as to their opinion as to the offer of settlement. It may be that implicitly the Court—

The Court: We talked about the fact that we are putting the names and addresses of class counsel on there, that means that they are going to get inquiries, and the next question is how may they respond to them. Is that the context in which you raised the question?

Mr. Harte: No, your Honor. I would contemplate that reference to the General Motors opinion in the Seventh Circuit, that it is within the discretion of this Court to permit communication under Rule 23 with the class members by class counsel.

The Court: I think it always is. I agree with that. That is no problem. What are you suggesting, that class counsel be allowed to send out a letter indicating that they do or do not favor the entry into this settlement?

Mr. Harte: Yes, your Honor.

The Court: Well, of course, the object thus far is to try and get a form of notice that is sufficiently neutral on balance so that the parties have the facts they need to know plus their own experience with their own car to decide whether they want to settle it. If we permit a war of letters on both sides we are going to create a great deal of rhetoric which is going to serve more to obfuscate the issues than otherwise. I am concerned about it, I am reluctant to do it.

What is your position on it, what would you like to do?

Mr. Harte: The difficulty that I find is that it is my understanding that the Attorneys General are going to do just that, and that they are going to send the communication to the persons within a particular state, as to the adequacy or propriety of this settlement. This was discussed in a prior hearing. And it would seem to me to be really improper if that were to occur, and that there be no communication at all from any objector.

The Court: It is obvious to me that either there be no communication at all, or that if anybody communicates everybody can. We start with that assumption.

What was your plan, counsel, with regard to that as far as Illinois is concerned?

Mr. Mulack: If the Court please, speaking for Illinois and some of the other states there was a thought to communicate an offer but, of course, communicate a letter with respect to the offer—we did apprize the Court of that some time ago.

The Court: I do remember that now.

Mr. Mulack: Your Honor felt that it might not be improper because the Attorneys General are elected officials

and have a right to communicate with their constituents. However, if the position is that everybody has an opportunity to send a letter on their own, through their own mailing and their own cost, I agree with the Court that it might create a certain problem and that a consumer might receive three or four different letters and if that is the case we would withdraw our request to mail a letter and only have one communication go out from this Court.

The Court: My judgment is that that would be the best. I think we should send out one communication approved by the Court which is as fair a statement as we can make on the basis of the settlement, the contents of the settlement and the meaning of the release and let the parties decide what they want to do with it. The results of receiving a flurry of contrary and argumentative letters is going to do more to confuse than to help.

Let's assume this will be the only communication.

Mr. Harte: May I be heard just on that point.

At this stage there are either proponents of this settlement or opponents of this settlement. It would seem to me that the proponents of this settlement can't identify whatever they desire with respect to the propriety of this offer of settlement in the offer of settlement and in the notice. You are going to try to make that as fair as possible but it is really, really an offer of settlement to the class members. It would seem to me to be appropriate that there just be one communication to counteract that which would be a communication from objecting class counsel. That would be the fairest approach to it. Thereby you would have both sides of the story, so to speak, brought to the attention of the class members.

The Court: What about a statement in the notice itself, that X attorneys representing the plaintiffs class have approved and recommended the settlement; X numbers of attorneys have not.

Mr. Mulack: We would concur with that provision.

The Court: You have got to maintain a balance there. As I remember the facts in this case a significant number of the plaintiffs' counsel have approved or are in favor of the settlement. The number of those objecting to it is a lesser number and that might have some significance.

Mr. Walner: Your Honor, one problem with identifying counsel who opposes the settlement and suggesting people can call him, is that there are too many people in the class for that. If only ten percent of the people tried to call even all of the attorneys who oppose the settlement it would be impossible to handle it. Ten percent would be 6,700 people. If a third of the class desired to call the lawyers involved in the case, you would have over 22,000 calls. It would simply be impossible to render the advice. That is why it is essential that the position of the opponents of the settlement be outlined in some proper form, however short you want to make it, where at least the minimum points are made in some fashion. Even if it is clearly indicated that these are the contention of counsel for the class members who are opposed to the settlement. There is no other way to give the people any advice in this case.

Mr. Gottschalk: I understood your Honor to indicate that the objectors position that it is inadequate and they would hope to recover a higher sum, statements like that, would be appropriate for inclusion with some balance in the notice to indicate there are competing views.

The Court: I thought that was how we were solving Mr. Walner's problem.

Mr. Walner: I understood your Honor, as I heard it, that you were intending to overcome the problem on advice by listing the counsel for the opponents in the notice and suggesting that the people can call him for any further advice.

The Court: It was inappropriate for me to add that last sentence. There was a suggestion that the counsel be listed and I think that is appropriate in case anyone

does want to call. I think it would be inappropriate to suggest that you could call them for advice because that might precipitate the flood of calls that you are speaking of.

Mr. Walner: Well, even if you don't overtly suggest that they can call, the information is too sketchy. First of all, they don't have a sufficient basis on which to make a decision on their own and the number of people who would need advice are so large that it is impossible for counsel to service that number of people who may make inquiries.

The Court: Consistent with my hope to get a single notice and a single form of waiver and so forth, it states the situation with sufficient balance and completeness so that the individual can decide, and assuming that we can do that would you prefer that the names of counsel be not part of that at all?

Mr. Walner: Whether counsel's name is included or not included, to my mind is not material. What is material in my mind, your Honor, is that there be a sufficient statement of the position of the opponents contained in the letter so that a person is made aware, not only that there is an opposing position, but some basis of an opposing position, even if it is in the nature of a new paragraph, and what the opponents hope to achieve on a maximum basis. Now it may be if part of that component, your Honor, has a punitive component, can identify what the claim for actual damages is on a maximum basis, and identify the balance of an undertermined punitive component if it is ultimately determined by the Court to be allowable. I see no reason to not inform people of what the maximum expectation could be.

The Court: Well, we have been through that before and I am not going to allow the notice to contain boxcar figures which will raise false hopes in the individual. A statement, however, that objectors to this settlement believe that a substantially higher recovery may be the ultimate result of the litigation is certainly fair. You get into

the next question and that is if you are reflecting that there are substantial numbers of objectors to the settlement and fairly stating their position and the theory of their objection and their hope or expectation of a higher recovery if you reject the settlement, is the automobile owners are not entitled to know that these objectors represent a significantly smaller than half segment of the representatives of the plaintiffs class, and that a lot of attorneys for the plaintiffs have approved it. I think if you are going to get the statement of the objectors in so that the impression is not created that all of the plaintiffs attorneys are objecting to the settlement, that that element has to be included factually, and you are entitled to a fair statement of your objection as to what the position is, without numbers and without raising what be an unrealistic hope. I think in that context General Motors is entitled also to a statement that some significant number of the plaintiffs' attorneys, attorneys for the plaintiffs class have agreed to approve the settlement. If somebody objects then the fact that somebody recommends belongs in there.

Mr. Mulack: That is correct, we would support that statement that the State of Illinois spelling out the number of objectors and number of proponents for the reason that many arguments are being made and were indeed made this afternoon about the lack of counsel. Well, we feel that representing the majority view of the proponents of the settlement that the individual class members are in fact being notified and that there may be a majority that is against it, but we endorse your Honor's concept. We believe that more properly it would belong on Page 10 of the suggested notice.

A paragraph could be put in very simply.

The Court: Let's assume that there will be no other communications except in response to direct inquiries. I leave it to your gentlemen. If you want the names and addresses of counsel in there then you are entitled to have them in there. I would hope that you start answering

your mail in any event because I get floods of letters saying, I am writing to everybody and nobody answers me.

Mr. Walner: Do we understand, your Honor, if inquiries are received either by letter or telephone we can respond without getting permission of the Court?

The Court: That we are calling you as members of the class, as attorneys for the class you can tell them anything you want.

Mr. Harte: Your Honor, the plaintiffs motion for leave to include a statement with notice to class members is then denied?

The Court: Yes, that is denied.

Now isn't there somebody here who wants to intervene, do I remember seeing that in the file—who is it now?

Mr. Gottschalk: Your Honor, I think that was taken care of at the beginning of the hearing with Mr. Bullock from Kentucky.

The Court: Just to participate in this hearing?

Mr. Gottschalk: Yes.

The Court: All right. Anything else for today, gentlemen—the motion for leave to include a statement with the notice to class members has been denied— plaintiffs' motion for leave to include a letter to class members to vacate order designating subclasses. That is one of the things that you want to address today?

Mr. Boyle: Yes, your Honor.

The Court: All right, go ahead on that.

Mr. Gottschalk: Excuse me, your Honor. May I just interject the other items on this agenda are two motions, both of which I received at 12:15 today. I have had no opportunity to consult with my client on them. If your Honor wants to hear a discussion of them and has time for them, of course, we will honor that. But these have literally—

The Court: Items 2 and 3?

Mr. Gottschalk: Yes, Items 2 and 3.

The Court: Let's hear Mr. Boyle on them and then we will decide whether we should go ahead.

Mr. Boyle: Your Honor, with respect to Point 2. I believe in reading the opinion of the Seventh Circuit, particularly Footnote 38, it appears on Page 33 and 34, that however cautious this Court was, may have perhaps overstepped the bounds of the Federal Rules of Civil Procedure by creating a subclass for settlement purposes. I would merely ask that your Honor give your viewpoint with respect to correcting that situation, and if you are inclined to do so, I would suggest that we get on with the representation of 71,000 people plus who purchased their automobiles and have not been extended an offer of settlement, and don't appear in line for an offer of settlement.

The Court: Well, the footnote is critical of the way this was handled. I must confess, though, having read the footnote for the first time, and I haven't read it recently, I wasn't given any clues as to why. It seems that as far as I'm concerned, I can't force General Motors to make an offer to the subclass if they don't want to make one so the subclass, if the original subclass is benefitting from the settlement had any rationale in its designation we would go ahead with the settlement as to them and we would go ahead with the trial, completion of the discovery and the trial on the rest of them, the post-April 10th people. You suggest the opinion said we should not now do this, that we should proceed in some other way?

Mr. Boyle: I agree with your Honor, I suggest that we ought to move ahead with the entire case and those people who are in the class regardless if they purchased pre or post April 10th are in fact one class. And that therefore the artificial distinction created by General Motors for the purpose of flying their settlement has been indicated by the Court of Appeals to prejudice the rights

of those people who purchased after the time that General Motors has agreed to give any consideration, and therefore the discovery which has been outstanding since September of 1977, and not one deposition has been completed on behalf of the plaintiff, I might add, that the reference that the Court of Appeals had to General Motors lack of compliance with the discovery has been on file here. I would hope, together with your Honor's wishes expressed here to proceed for those people as quickly and as expeditiously as possible.

The Court: You have two concerns: One, you want the post April 10th case to go forward as quickly as possible, and I agree with that. We've still got a post April 10th case and we have got to do something about it.

Your second suggestion is that those left out of this settlement, don't take advantage of it, are no different than the post April 10th people and they all ought to be tossed back into one big class for the completion of the litigation. I have an open mind on that, I don't know whether the distinction between the pre and post April 10th people I thought had some rational validity to it. Whether after the settlement is consummated, and those who wish to take advantage of it, that distinction has a continuing validity in terms of going forward with the evidence in the trial, I would like to consider. I said I will try to maintain an open mind on that.

Do I understand you to suggest, however, that the going forward with the settlement which we are now discussing and which we now contemplate has some fatal flaw in it because of the improper designation of the subclass?

Mr. Boyle: I am not sure I understand what you mean, your Honor?

The Court: Well, if the Court of Appeals makes a flat statement to the effect—

> "The means by which the trial court attempted to create a subclass may have seriously jeopardized the right of the post April 10th—et cetera"

The trial court discretion is bound by the requirements of the rule, the trial Court overstepped the bound of the Federal Rules of Civil Procedure—the trial Court's order created a settlement subclass did not conform to the requirements of Rule 23 et cetera, et cetera.

Mr. Boyle: Right, your Honor.

The Court: I understand all of these things in terms of English and what they mean. Do they mean, however, that the Court of Appeals is saying that we cannot go forward with the opt out, the voluntary settlement procedure we are now contemplating? I don't read it that way. I don't think they mean that.

Mr. Boyle: I don't either, to be honest with you. I would suggest that perhaps your Honor enter an order nunc pro tunc relative to the—I believe the March 17th order. That namely that General Motors, since it does not have an approved fair, adequate and reasonable settlement to offer 67,000 people, they shouldn't have the shield of perhaps an unfortunate order with respect to the 72,000 people, or 71,000, who still have the same rights that they had when your Honor issued the original order of October 13th.

The Court: Well, that is based on the conclusion and Footnote 38 that the means by which the trial Court attempted to create a subclass may have seriously jeopardized the rights of the proposed April 10th purchasers. I am just unable to understand how settlement with the pre-April 10th purchasers have jeopardized the rights of the post April 10th purchasers who remain plaintiffs in the litigation with all the rights of the plaintiffs and the case is going to go forward and determine those rights so you are arguing the same thing and the Court of Appeals apparently understood your argument and agreed with you but I don't understand your argument and I don't understand what they said, frankly.

Mr. Boyle: Can anybody say it a little better?

Mr. Clark: If the Court please, one thing that bothers me—it is likely, statistically or mathematically, that you

will have pre April 10th people that do not sign the release and send it back with a case still pending here in a post April 10th class.

The Court: I am sure that will take place. As I said, I will keep an open mind as to whether we should throw them all back into the same pot and try them all together recognizing that the difference between their situations is the factual one of, either they had notice and adequate notice when they bought it or they didn't. I don't see any harm to either the post or pre April 10th people arising from that situation. They are all going to remain in the lawsuit. They are all going to have their claims adjudicated. The Court of Appeals has made that absolutely clear and I don't think anybody has any doubt about it. Whether we say that all members of the same class, or whether we are going forward with two classes, the left-over from the original class and the post April 10th class does not at this moment seem to me to be anything more than a procedural problem. I don't see any substantive consequence to it.

Mr. Clark: I know that you do not want to address it today but there is a very practical and real problem. Of the six or seven counsel who have favored the settlement, just as to what the future role of those counsel should be, having recommended one settlement.

The Court: All right, that is a problem I haven't even thought of.

Mr. Clark: It may be premature until we get to it.

The Court: I am not making any decisions on it today.

Mr. Gottschalk: Your Honor, my reaction to it is that it is the point that certainly does not affect the current offer, it is somewhat academic in light of the Court of Appeals decision which in Footnote 58, on Page 53, talks about exactly what your Honor contemplated, and that is that it may be—they similarly, even if nearly all of the offerees, except the GM settlement offer, rather an unlikely possibility since the offerees number approximately 67,000.

Those rejecting the offer would not be denied the benefit of class adjudication of their claims in the Federal Court. Their claims could be adjudicated along with those of the 66,000 post April 10th 1977 class members.

Our position, your Honor, is obviously that there is a viable and rational factual basis for distinguishing between a purchaser prior to actually the end of March and those afterward, in this case April 10th, whether or not that would cause us to come before the Court and ask for some differing treatment at trial is premature and speculative at this point.

The Court: As I remember it you have been threatening for a long time a motion for summary judgment—

Mr. Gottschalk: At the plaintiffs urging the last time we were before you I was put under the discipline of filing summary judgment briefs with respect to post April 10th purchasers by June 28th which we will have on file at that time.

The Court: All right, so we will at least delineate the issue if that post April 10th class survives that motion. Then as I said once again, it isn't a matter of substantive rights but almost a simple procedural question as to how we handled the two groups.

Mr. Gottschalk: Yes, your Honor.

The Court: I think we decided pretty much what we have today, have to decide today. The motion to vacate the order designating the settlement subclass, I am not going to decide at this time, but it certainly is without prejudice to its renewal—I will just indicate that it is not ripe for decision at this time and we will put it over. The cut-off dates on the remaining pretrial motions and discovery—I don't know whether we can set those or not. Mr. Boyle said he has got a lot to do and a long way to go. I don't know how General Motors feels about it. There has been some discovery in the case and I thought that related generally to the whole issue, all of the issues in the case. I didn't remember that we limited it to the

pre April 10th group, maybe we did, I don't remember that.

Counsel, what were you going to say?

Mr. Goldman: Your Honor, the discovery was essentially cut off, or stopped on the substantive issues in this case back in January following the settlement offer.

The Court: It was.

Mr. Goldman: And since that time there was a period when there was discovery relative to the fairness hearing issues. However, at the present time there are currently outstanding several sets of interrogatories, several sets of document requests and also, your Honor, most importantly of the ten substantive depositions that have been noticed not a single one has been finished.

The Court: Well, all right, that discovery should go forward. If for no other reason than we've got to try that post April 10th people.

Mr. Gottschalk: May I speak to that, your Honor. Again I got this motion at exactly 12:15 today. But a little bit of research that I have been able to do to get back into this situation—let me just speak to it at some length, as a matter of fact, if your Honor wants to hear argument today.

The discovery that went on prior to January of 1977 related to all issues. It was plaintiffs' discovery, not General Motors discovery. It included everybody in the class to which General Motors objected. Then it focused on the fairness hearing. After the fairness hearing we were before this Court in October from 1978. We had a conversation with Mr. Boyle, Mr. Smith in my office had, in which they discussed the outstanding discovery. Mr. Boyle, and it is on Page 12 of the transcript of that proceeding, indicated that they thought that the next step in discovery was to consolidate the fine and reduce the number of outstanding and proliferating document requests so that we know what documents they wanted before we went ahead with depositions so there would not be repeated

demands to recall witnesses as more and more documents got produced and they had agreed to do so. That is at Page 12.

At that time, however, you will recall, your Honor, that we were asked to send out the notice and that plaintiffs objected, Mr. Harte specifically objected to that, and everybody concluded that the best thing was a stay until the Court of Appeals acted.

The Court: There is no doubt in my mind that discovery either was stayed officially or should have been. I see no problem with that. The only question we are raising is, when do we start renewing it and when are we going to cut it off.

Mr. Gottschalk: Your Honor, my position on that is that in light of the types of objections that were raised to the Court of Appeals about who was in this class, who are the class representatives, who can bind the class members by taking depositions and who cannot raise an important managerial question that ought to be resolved and they can be resolved very promptly. But until that is decided under the principles established in the manual, regarding the timing of merit discovery, from General Motors standpoint, we reluctantly are going to object to proceeding ahead with substantive pieces of this case until we have a clear resolution of certain of the class issues that have now been muddied in part because of the events of the last several months, namely the Court of Appeals opinion and its various comments regarding this action.

Specifically, your Honor, we are at a situation where this offer is going to change the membership of the class. It is going to effect who the class representatives are. It is going to effect who the class counsel are. Your Honor entered a pretrial order in 1977 indicating which groups of counsel are responsible for which activities. Things fell apart after that in light of the division between plaintiffs counsel. One day I get a call from one lawyer demanding something, another day I get a call from another lawyer. There right now is no unanimity in the plaintiffs

camp. I have no idea who is actually represented the class in this situation. I don't know whose plaintiff is in and whose plaintiff is out. There are claims that the transmission issues are involved in this case. I agree with your Honor's comments today, they have never been certified, but we are bombarded with discovery requests for matters going to transmissions and other issues.

I would propose, your Honor, that the appropriate course of business is for us to get our brief on file on June 28th, the summary brief going to the post April 10th. Get the offer out. There be a date in early fall when we will have the results of that offer in terms of who has accepted and who hasn't. At that point you are going to know whether you have 12 plaintiffs counsel representing the class or four or three—who the class representatives are, and we will have to decide at that point whether there is going to be some representation of the post April 10th group versus the pre April 10th group because there are divisions between them which create conflicts in the presentation of their case. They do have to rely somewhat on different theories. What I would propose, your Honor, is that we ought to have a very early pretrial threshing out those issues of what the class composition is, who the class representatives are, what issues are going to be developed in this case, or certified, because those are indispensible in our having an intelligent program of discovery. In the meantime, your Honor, to get discovery moving I think that the plaintiffs ought to consolidate their discovery request. Submit them to us, we will be happy to sit down, particularly with respect to documents, and get those shaped up and away over the summer where we can put those to your Honor which will help focus on what issues are properly discoverable and what are outside certification. But I do have a strong objection to just proceeding with deposition notices and further discovery without some greater coordination and delineation of who is involved.

Further, your Honor, since we are on the topic, I hadn't meant to speak to it at this length today. We have always been troubled by the problem of class membership as your Honor knows, and the class was certified over our objection.

The definition of class does read, persons who without their knowledge or consent purchased cars. The proposed April 10th category makes this most acute. Maybe that will be handled by summary judgment motion. If it is not, your Honor, there is a substantial problem of one way intervention which is frankly increasingly disturbing to me as the evidence gets stale, and that is who is actually in this class. Who is going to claim at some point that they lacked knowledge about these engines. It would be extremely prejudicial to GM to await a time after some judgment was entered, assuming it might be adverse to GM and then ask people, did you have knowledge or not. Are you a member of this class. Are you bound by those determinations. I mention that, your Honor, as not something your Honor has to resolve today, but I think there is extremely difficult issues as to how this class action is managed and who the representatives are before we get into a lot of substantive discovery only to find out that somebody is going to claim that that didn't bind them, they now need another shot at one of my employees because his client interests weren't being adequately represented by the group that took that deposition.

I suggest that we have a pretrial conference, whatever your Honor would like, to try to thrash through these issues, set up a program, and in the meantime let them consolidate their discovery requests that are outstanding, bring them to us, and we will file their objections if they have objections and that will help the Court focus on the discovery issues and the discovery program.

The Court: Well, there is no doubt that the settlement offer interrupted the progress of the case which in normal course would have been handled in accordance with the principles of the manual. There is no doubt that the approval of some counsel for the plaintiffs of the settlement, or the disproval of others, has created a division which made this smooth working of the plaintiffs class as a single unit impossible. These things do have to be resolved and we have to take another look at them. I recognize them. I think there is some merit to that. The motion before me precisely is to set a discovery cut-off date. I am not

sure that I am prepared to do that now. What we are more concerned with is setting a discovery commencement date. I would like to first get the settlement matter out of the way and get the notice approved and get it out. We don't have to wait for the numerical results to go forward because we know that there is going to be some number of people that are going to refuse the settlement offer. So we are going to have—and I would assume that most of the attorneys in the case by virtue of that fact are going to stay in the case. I can't imagine anyone going to run out of clients that belong, or members of the class that aren't in either those who refuse the settlement or the proposed April 10 people. If there are, so be it. But I didn't see that as a significant change in the posture of the case. Maybe you do.

In any event, counsel, what were you going to say?

Mr. Goldman: I heartly agree with your Honor what we need is a discovery commencement date.

I was at that meeting that Mr. Gottschalk referred to that took place with Mr. Smith and between that time and now, and particularly over the last few weeks, I have gone through all of the requests that plaintiffs have served to date. I've gone through what I feel have not been replied to and what we need and I can sit down with—

The Court: Are you prepared to put that in some form that you can give to Mr. Gottschalk?

Mr. Goldman: Yes, your Honor, the first thing next week.

The Court: I wish you would do that then and that will become the basis for our consideration of what ongoing discovery is demanded and what you think you have already asked for and what you haven't got. I will deny the motion to set a discovery cut-off date. You recommence discovery of what you think is currently outstanding. You and Mr. Gottschalk can try and work that out and if you have any problems I am sure you will be in on an appropriate motion. Discovery can recommence, but in the meantime I would hope, based upon the existing brief-

ing schedule and a motion for summary judgment to get that out of the way because either way it kind of hangs as a cloud over discovery. There is an uncertainty about the case as long as that is pending.

Are you going to be able to meet the briefing schedule that we have set on that?

Mr. Goldman: On the summary judgment motion?

Mr. Gottschalk: Your Honor, it is only a reply brief.

The Court: All right, that is the only thing left. I thought I had two briefs coming. I haven't read those yet because while this was in the bosom of the Court of Appeals I felt that it was unethical to even think about it.

Mr. Goodman: We are commencing discovery by serving on the defendants are reorganized plans for what is outstanding, and then we will thrash it out.

The Court: I would like a status report from time to time to see how this settlement thing is progressing and how the discovery is progressing. You will at least have the issues clarified by counsel's request.

Mr. Gottschalk: We will be in on July 5th, your Honor. I suspect that will be an appropriate time.

The Court: That would be a good time for another status report. Let me try and summarize what we have done today.

Motion for leave to communicate the offer of settlement. is still under advisement. We are awaiting some revisions of the proposed form of the offer. Plaintiffs motion to set a schedule for a cut-off date on the remaining pretrial, motion for discovery is denied without prejudice to its renewal. Plaintiffs motion to vacate the order of March 14th creating a settlement subclass is denied. Plaintiffs motion for leave to include a statement with a notice for class members is denied.

I think those are all the matters that were up. I assume just as quickly as possible I will get the revised form and we have our July 5th date.

Mr. Walner: Your Honor, may I speak to one brief matter although it is not on the agenda and it won't affect the proposed notice or discovery discussions that have transpired today.

The Supreme Court recently decided a case involving the right of the consumers to have standing to sue under the Sherman Act, and while there is no Sherman Act count in this case the language in the Sherman Act relating to business and property very cl[illegible]ly parallels the language in the Lanham Act regardi[illegible] damage to business and property, and when we have a chance to examine the decision of the language comparisons, it is close enough, your Honor, that we intend to ask the Court to reconsider its decision with respect to the Lanham Act. It has application, we think, only because General Motors has taken a consistent position that there is no cause of action stated under the Magnuson-Moss Act, and if they should ultimately prevail in that argument on appeal, I think this Court has already rejected it, we would want reconsideration of the dismissal of the Lanham Act cause of action if it is appropriate, your Honor.

The Court: That decision was a broadening of the standard concept, as I remember it, the one you are referring to.

Mr. Walner: Well, I don't know if it was a broadening of the standing, among the bar members I know nobody really questions the best standing of the consumers to sue until the Eighth Circuit decision denying it.

The Court: Well, in any event, certainly if you raise the issue at an appropriate time. I appreciate you calling it to my attention, I will take another look at that case. I read it only very quickly in passing.

All right, gentlemen, see you on July 5th, have a pleasant July 4th now that we have provided for your enjoyment of it.

(Which were all the proceedings had in said cause on said date.)

IN THE UNITED STATES DISTRICT COURT
EASTERN DIVISION
NORTHERN DISTRICT OF ILLINOIS

IN THE MATTER OF:

GENERAL MOTORS CORPORATION
ENGINE INTERCHANGE LITIGATION.

Multidistrict Litigation No. 308

CERTIFICATE

I HEREBY CERTIFY that the proceedings had at the hearing of the above-entitled cause before The Honorable FRANK J. McGARR, on June 14, 1979 were reported by me in shorthand and that the foregoing transcript consisting of pages 1 to 55 inclusive, is a true and correct transcript of the original shorthand notes so taken as aforesaid.

.....
Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN THE MATTER OF:
GENERAL MOTORS CORPORATION
ENGINE INTERCHANGE LITIGATION.

Multidistrict Litigation No. 308

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled matter before the HONORABLE FRANK J. McGARR, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois on Thursday the 5th day of July, 1979 at the hour of 2:00 o'clock p.m.

PRESENT:
MR. CHARLES A. BOYLE and
MR. WILLIAM HARTE
(77 West Washington Street, Room 300,
Chicago, Illinois 60602)
MR. LAWRENCE WALNER
(221 North LaSalle Street, Room 1748
Chicago, Illinois 60601)
MR. DONALD G. MULACK and
MR. MICHAEL BENEDETTO
(228 North LaSalle Street, Room 1242
Chicago, Illinois 60601)
appeared on behalf of the plaintiffs;
KIRKLAND & ELLIS
(200 East Randolph Drive,
Chicago, Illinois 60601) by
MR. THOMAS A. GOTTSCHALK
MR. STEPHEN C. NEAL and
MR. JAMES D. ADDUCCI
and
MR. LOUIS H. LINDEMAN, JR.
(Office of General Counsel, General Motors Corp.,
Detroit, Michigan 48202)
appeared on behalf of the defendants.

The Clerk: MDL Docket No. 308. In regard to General Motors Corporation Engine Interchange Litigation. For a status hearing and motion of entry of order approving notice of offer to settle claims.

Mr. Gottschalk: Good afternoon, your Honor, Thomas Gottschalk for General Motors.

Pursuant to the pre-trial conference on June 14th we submitted, I believe on June 21st, a revised form of class notice regarding the settlement offer, and have submitted a motion just for the record, to ask approval to communicate that offer in the form of notice attached, with a draft order appended to the motion. Although responses from the plaintiffs were due a few days ago we did not receive any until 12:00 noon today, when Mr. Walner's three comments were received by my office and at 2:00 o'clock Mr. Harte served me with written objections by other plaintiffs which we have been going over in the last fifteen minutes.

The Court: I have the objections that Mr. Boyle filed I saw them just a moment or two before I came out. I have not seen Mr. Walner's. Do you have a copy?

Mr. Walner: They were supposed to have been delivered, your Honor, I will be glad to give you another copy.

The Court: Give me a copy. They may have gotten delivered but they didn't get all the way. All right, thank you.

Well, the hearing was set in the anticipation that I would have these objections sometime beforehand and could consider them. At our last hearing we agreed on some changes in the form of the notice—Mr. Gottschalk, have all of those been incorporated in it?

Mr. Gottschalk: I believe they have, your Honor.

The Court: All right, why don't you tell me, Mr. Walner and Mr. Boyle, briefly what your objections are and let's try and dispose of it on an oral argument basis.

Are these the objections Mr. Walner has just handed up?

Mr. Harte: No, your Honor, these are the objections of Mr. Boyle, if I can address myself—

The Court: Mr. Boyle, all right, I am ready. Go ahead.

Mr. Harte: Preliminarily, your Honor, we would like to call your attention to the fact that we have just received notice of the decision in a case styled Gour vs. Dairy Motor Company, in the Louisiana Court of Intermediate Appeals, which we believe bears upon this question. I would like to hand up a copy of this decision and state that this decision was received about 12:00 noon this afternoon. It was decided June 29th. I am not familiar with any re-hearing procedures within the State of Louisiana, Intermediate Appeal Courts. But essentially it identifies and approves a remedy of recision. In that State it is called, or it is styled, annulment of a sale of an automobile for damages. It comments favorably on the theory, we believe, under the federal law, but it is based primarily upon the State Law of Louisiana which an analysis of the decision reveals is not that dissimilar from any other relief granted, including the relief provided for under the Magnuson-Moss Warranty Act. And what this does raise, however, we believe, your Honor, and this should be addressed I think to the entire notice of the settlement offer, but what this raises is rather serious and we believe substantial questions of collateral estoppel in this case as to General Motors on the issue of liability. While this was not a class action at all General Motors was able and did participate in the defense of this case, and there has been an adjudication, we believe, which bears upon the issues involved in the instant case and we expect to rather shortly move for summary judgment on the liability issues.

It also identifies a recisionary remedy which is based, which is styled I think, although annulment of a sale, it is still recisionary, which permits the automobile car owner to present the car to General Motors and seek a return of the cost of the car, or actually the sales price

less a credit of eight cents a mile for the mileage that the automobile owner used. And it also provides for attorneys' fees to the successful prosecutor, to the attorneys who successfully prosecuted the case on behalf of the automobile owner.

Given this decision, your Honor, we respectfully state that the notice as proposed by General Motors, and as supported by the Attorneys General, and possibly by other plaintiffs' counsel which reflects the statement of General Motors that it has a viable defense to the claims raised by the plaintiffs in this case as patently inaccurate. We believe that in view of this decision General Motors cannot now take the position that there is any substantial question on the issue of liability and consequently we would address that objection to the notice now proposed which permits General Motors to suggest that it has a viable defense to this case.

Now we also have articulated written objections which are before the Court and essentially they adopt objections that were set forth in the prior written objections and also adopts the oral objections made at the prior hearing in this case and also raises objections as to particular portions of the notice given to the Court, and I can go through those one by one if the Court desires.

The Court: Well, we can do that. Let me hear from Mr. Gottschalk on his reaction to the impact of this case from Louisiana on the case we have here.

Mr. Gottschalk: This case, your Honor, is one that has been brought to our attention in the past, although I would doubt that your Honor would remember it by name since it was so many months ago after the initial trial decision was rendered finding against General Motors under the law of the State of Louisiana. As this Appellate decision reflects, the order at that time was one of essentially recision without a mileage charge back to the individual plaintiff based on a theory of unilateral mistake of law which is unique and is unique to some extent to the State of Louisiana. That was brought out by objectors to

the settlement before the Court issued its final order coming out of the fairness hearing. The matter was taken up on appeal and I assume further appeals of this decision will be sought by General Motors.

I would note that it really has no bearing on this action, particularly as a legal matter for a couple of reasons. First of all it goes off on the facts unique to this particular plaintiff and there was an extended evidentiary hearing with regard to his expectation and the specific transaction which he purchased.

Second of all, your Honor, it goes off on straight law grounds and does not in any way discuss the question of warrant. It discusses the unilateral mistake of law theory in Louisiana. The Appellate decision adds to it a theory under the Uniform Deceptive Trade Practices Act which is a state law provision enacted in some states but not at all analogous in its provisions to the Magnuson-Moss Warranty Act.

Apart from that, your Honor, I would merely comment that the notice of settlement that is being proposed does refer to recision, I believe, and other equitable remedies being sought by the plaintiffs. So we don't foreclose the fact in the notice that the plaintiffs are seeking that here. Obviously, your Honor, if plaintiffs wish to bring on a summary judgment motion, collateral estoppel, or whatever, we will meet that in due course. It is not applicable any more than I believe they would say that the decision that General Motors has won in its favor based on trials, in fact particularly with respect to the post-April 10th group in which General Motors has been found not liable are binding on the claims of all post-April 10th purchasers as a matter of law.

So we regard this decision as not adding any different dimensions to this case, it is under totally different statutes. This class has been certified under the Federal Statute only which encompasses a different legal theory.

As to the remedy provided, your Honor, I think that is adequately covered in the notice.

The Court: I don't believe that this case, even though it has progressed to the Appellate level since we first talked of it has any immediate bearing on what we are about here today, and that is the approval of a form of notice. So let's go ahead with any additional comments you have on the form of notice and we will take them one by one.

Your first point, as I understand it on Page 2, has to do with reference to the substitution of other components, including transmissions?

Mr. Harte: Yes, your Honor has ruled upon that, I believe.

The Court: I think I had and if not I think the form of notice is adequate and satisfactory in that regard.

Mr. Harte: Your Honor, the second objection relates to Page 3 where it is articulated that "Some" plaintiffs also contend that General Motors substituted other powertrains.

Mr. Gottschalk: Your Honor, if I can shorten this discussion where we don't have a particular objection, based on a quick reading I understood only some plaintiffs contended—since we are talking about plaintiffs' contentions, I suggest deleting the word some and beginning with the word plaintiffs, plaintiffs also contend.

The Court: All right, that will solve that problem.

Mr. Harte: Your Honor, the third objection is covered by the Court's ruling as to Paragraph 1. The Court need not—

The Court: All right.

Mr. Harte: The fourth objection requests that you strike the words "and probably is" on Page 5, Line 6.

Mr. Gottschalk: Your Honor, on this one the plaintiffs are incorrect and have apparently forgotten the evidence in the fairness hearing record in the form of the depositions and exhibits of Mr. Sheldon Barquist. The

fact is, your Honor, that the mechanical insurance policies which are I believe being referenced here on Page 5—

The Court: The top of the page, on Page 5.

Mr. Gottschalk: They have to do with mechanical insurance policies or service contracts that people may purchase from a wide number of insurance companies. They are not the same thing as the offer of insurance coverage that General Motors made in April of 1977. These contracts, as Mr. Barquist, who is the vice-president of sales and marketing of General Motors Acceptance Corporation, vary considerably in their coverage as to the components, as to the terms of payments, premium costs—they differ in a wide variety of ways. One of the unique features and attractions of the insurance certificate that is being offered in this case, for example, it has no exclusion, no deduction and covers all aspects of the powertrain down to the last nut and bolt, and there is no other policy that we are aware of that does that. So we wanted to be sure from the standpoint of the class members that when they evaluated whether they wanted to continue on with the present mechanical insurance coverage and/or accept or reject the coverage that is being offered by way of this settlement, that they refer to their purchase policy and determine or try to ascertain the degree of difference so that they can make an informed judgment as to whether they want to have both, elect one and refuse the other. So to that extent we thought it was helpful to note this to class members so they can make an informed judgment.

Mr. Harte: Your Honor, if I may respond.

The words may be different, and it covers what Mr. Gottschalk has talked about, but the words "may be different" covers what Mr. Gottschalk has talked about, but the words "may be," and "probably is different" means that General Motors is giving an opinion, actually an attorney's opinion to the consumer which we think is inappropriate.

The Court: You can strike it without doing any harm to anybody's position.

Mr. Gottschalk: That is all right with me.

The Court: We will take "and probably is" out.

Mr. Gottschalk: If the plaintiffs are proposing that we will agree to it.

The Court: It will read: "The policies or contracts may be different from—"

I think actually that greater notice is given to the individual involved with the insertion of a phrase in that it alerts them to the fact that it not only may be different but since it probably is you better take cognizance of it. But on the other hand if the plaintiffs think it reads better the other way I don't think it is a significant point. So on the basis of the objection we will strike "and probably is."

Mr. Harte: Your Honor, the next objection appears on Page 2 of the objections, the number 5, and we address that to the portion of the notice styled, The Release. We believe that these objections, of course this objection also is covered in Paragraph 1, but there is a gloss here, we believe, on the objection or an emphasis, if you will.

The Court: It is underscored in the form I have, is it in yours?

Mr. Harte: It is, your Honor. But it is included with all of the other language relative to the release of rights which are governed by issues raised in this case. We think that that sentence, or a sentence should be lifted from that portion of the paragraph set out in another paragraph and emphasized, because when you bury this sentence in with all of the other language relative to releasing rights and claims by issues raised in this case, it kind of deludes the consumer into believing that all he is releasing is his rights and claims under the issues raised in the instant case.

The Court: I think it very clearly says to the contrary and it is underscored. The only other portion underscored is on the next page where it emphasizes the same thing. That is it bars all claims. I think that is a sufficient em-

phasis of it. I can't think of any way to make it more emphatic. So I will overrule that objection.

Mr. Harte: Your Honor, number 6 relates to placing the word "Oldsmobile" in the first paragraph, on Page 6 the second line to the bottom. Which reads now: "Motors other than the Division." It should read, we believe, "Motors other than the Oldsmobile Division of General Motors."

Mr. Gottschalk: That would be a substantive change in the release, your Honor, we would object to it. It would greatly narrow the release from the form negotiated and agreed to, and for which General Motors has agreed to make this consideration. We are talking about any engine component or part or assembly produced or manufactured by any division of GM or any supplier to GM other than the Division of General Motors which marked or sold such automobiles. If a person happened to have another 1977 GM car, the release would cover that as well as an Oldsmobile. So this is correct but to put in that language would be a narrow one.

The Court: I am trying to understand the objective point. Will you tell me again why you think "Oldsmobile" should be in there, counsel, I don't see it.

Mr. Harte: We believe, your Honor, that the designation of Oldsmobile Division of General Motors more appropriately identifies what actually occurred.

The Court: Well, what actually occurred is that everybody bought an Oldsmobile from the Oldsmobile Division of General Motors, or they wouldn't be plaintiffs in this suit.

Mr. Harte: That is correct so why not put the Oldsmobile designation in.

Mr. Gottschalk: It is because this is a description of the release not of the claims of the plaintiffs in this lawsuit. It is not an attempt to describe what occurred with respect to these plaintiffs, rather than what is the affects of signing the release.

Mr. Harte: I would understand if the Chevrolet Division of General Motors sold Oldsmobiles, then I suppose the language as it presently is included is appropriate, but since the Oldsmobile Division of General Motors sold Oldsmobiles, the Oldsmobile Division of General Motors ought to be in there. I don't understand Mr. Gottschalk's objection, frankly, and the fact that it changes something in the release document which we haven't got yet, that is just too bad.

Mr. Gottschalk: The fact is that the release document has been of public record since December 1977, but apart from that record I can try to explain this again. I don't know if it will be helpful to respond to a question, if the Court has one regarding this—let me just make it simple this way.

If an individual eligible for this settlement has had two 1977 GM cars, one Oldsmobile and one Chevrolet, then by accepting this settlement offer he releases claims with respect to any of the 1977 automobiles, not just the Oldsmobile one. As your Honor knows, this offer has been extended to the Buick purchaser, the Buick and Pontiac purchasers already. It is with that in mind that again, what we are getting at in this settlement with the Attorneys General were charges that they were making that extended far past the Oldsmobile Division to all of the other GM car divisions.

The Court: Well, all right, with that explanation I think it is reasonable to leave it as it is and we will overrule that objection.

Mr. Harte: Your Honor, it wasn't our understanding that the release documents which had been transmitted to the public were actually the release documents which were going to accompany this offer of settlement. I thought they were new release documents that were going to be drafted.

Mr. Gottschalk: We can cover that at the appropriate time, your Honor.

The Court: All right, let's worry about that when we get to it.

Mr. Harte: Thank you.

Objection 7, your Honor, was covered by the Court's ruling as to the objection in Paragraph 1.

In Objection 8, it refers to the utilization of the word "some" on the bottom line of Page 7. It is our contention that specifically with reference to the substituted transmission case that—

The Court: Well, that is a reference to not this case but the transmission case which is pending elsewhere, is that right?

Mr. Harte: That is right.

The Court: Why is it necessary to refer to that here?

Mr. Gottschalk: Your Honor, if I can suggest shortening this. We believe the word "some" is correct in this context. However, without conceding that the 200 transmission was used in all I suggest if we just delete the word "some," you will bypass any argument, just say 1970 Oldsmobiles, without involving this Court, whether it is some or all.

The Court: That solves that problem, we will do it that way.

Mr. Harte: Your Honor, the ninth objection relates to the paragraph styled, or the group of paragraphs styled, "Effects Of Rejecting The Offer." Now we think that this entire section should be deleted. Alternatively we state that if it is in, the utilization of the word rejecting should be substituted and in its place the word, not accepting, or the words, do not accept, should be substituted for reject.

The Court: Well, reject does suggest some transitory action, and the sentence is a little bit complicated. If you reject the order you don't have to do anything. It is a more subtle contradiction than that. Rejection suggests

affirmative action. As far as I see this it is neither a legal or a factual problem, it is merely a stylistic one. But if you do not accept the offer no action by you is necessary. It would, I think, say the same thing.

Mr. Gottschalk—

Mr. Gottschalk: I guess I am not following the problem.

The Court: Page 9 of the first paragraph. If you do not accept this offer, no action by you is necessary. Then change the caption, Effects of Not Accepting The Offer.

Mr. Gottschalk: That seems to be the same thing we have, so I will agree with it.

The Court: I think it is the same substantially, but if the objectors like it better this way let them have it this way.

Mr. Gottschalk: Your Honor, so we can be clear and formalize this, does it now read—if you do not accept the offer—

The Court: Right.

Mr. Harte: If you do not accept the offer no action by you is necessary. If you are a member of the Class and you do not accept the offer then you will be—et cetera. Then the caption is, Effects of Not Accepting The Offer.

Mr. Gottschalk: Fine.

Mr. Harte: The next objection, your Honor, at the top of Page 10, relates to the two sentences, beginning in the third line of Page 10. "It is likely that the parties losing at trial will appeal. The Court makes no prediction as to how or when this litigation will be finally resolved."

The Court: You object to the sentence that it is likely?

Mr. Harte: Your Honor, I object to both sentences. I don't think it is appropriate to place those sentences in the notice. It is really a leverage upon consumers to accept this offer and it is also inappropriate, we believe, for the Court to make the statement—

The Court: I think the speculation that it is likely that the parties losing will appeal is objectionable and should come out. The second sentence I would like to see an affirmative statement that however anyone may read this it does not contain any prediction or suggestion of the Court as to how this thing is going to go. I think everybody should have that point affirmed.

I would sustain the objection to the sentence, "It is likely that the parties losing at trial would appeal," but I would leave the next one in.

Mr. Gottschalk—

Mr. Gottschalk: We are obviously not trying to coerce or leverage anybody. We are trying to give full information so that the people would understand enough about the case.

It seems to me a statement, who are likely, is the problem, to the affect that the parties losing that trial will have a right to appeal—

The Court: You might say, this case may later be settled or may go to trial, and if it is tried the parties losing may appeal.

What we are trying to do is to give them the information they need without warning them, reaffirming the public's belief that all litigation goes on forever. It just seems that way, it isn't always true.

Mr. Gottschalk: To General Motors, your Honor, your suggestion is acceptable.

The Court: Let's leave it that way. The case may later be settled or may go to trial. If it goes to trial the losing party may appeal.

Mr. Harte: Your Honor, we respectfully accept to the Court's ruling and reserve our objection.

The Court: All right, you may do that.

In the next sentence, over objection, it may remain as it is.

What is the next one?

Mr. Harte: Your Honor, Pages 11 and 12, the comment is made by General Motors as to the Court of Appeals' decision in this case. We don't believe that characterizing the Court of Appeals' decision as "The Court of Appeals concluded that the settlement could not be considered as a basis for the compromise and dismissal of the entire class action without allowing further discovery to be taken and hearing additional evidence." We do not believe that that is a fair characterization of the Court of Appeals. It held, and I think the basis of the decision was a much greater, and I believe the Court may have misapprehended the basis upon which the parties had sued. Of course we do not now have the transmission and powertrain aspect in the case, but also the question of the theory, that is the comparability really is not at issue here, it is a question of valuation. It also is a question of punitive damages. It is also a question of recisionary damages as outlined in the Gour case. So we believe that that acceptance should be substantially broadened so as to give the consumer some idea of what was stated by the Court of Appeals in its decision.

The Court: Well, I think the essence of what the Court of Appeals said, for purposes of this notice and what the class should know, is that the Court of Appeals concluded that the mandatory settlement for the entire class was objectionable and they reversed it. But they did allow the settlement to go forward on an individual option basis. That is really all you have to know. If you take the sentence beginning at the bottom of Page 11, the United States Court of Appeals for the Seventh Circuit has reviewed the settlement offer and reversed the approval of the settlement as mandatory to the entire class by a—I don't think you will need the vote, reversed it is enough—as mandatory for the entire class. Take the next sentence out. The Court of Appeals thereafter, did, and leave the following sentence in—

Mr. Gottschalk: No objection to that.

The Court: All right, we'll do it that way.

Mr. Harte: Of course that doesn't give the class any information relative to what the Court of Appeals did.

The Court: All the class has to know is that the Court of Appeals didn't like it in the mandatory form but on an optional form they approved it. Other than that the only issue before the Court of Appeals was the settlement, the validity of the settlement offer and whether it can be sent out. So it will read—reverse the approval of the settlement as mandatory on the entire class. Mandatory what—for the entire class, mandatory for the entire class, period. The Court of Appeals did permit to allow—et cetera—and the rest of it is okay. The Court of Appeals concluded sentence comes out, those four lines.

Mr. Harte: Your Honor, we again would respectfully—

The Court: The record will reflect your obligation to that.

What is next?

Mr. Harte: Page 13, we object to the paragraph styled, "Separate views of parties approving of this settlement." We believe that is inappropriate, and more specifically we state that the language "Particularly because, in its view, the plaintiffs and class members are not entitled to any recovery in this litigation"—it is highly inappropriate, particularly in view of the Gour case and particularly in view of what has transpired in this litigation thus far.

The Court: Nobody has ever agreed to a settlement yet without being afforded the right to say that this settlement is not a concession of liability but just a way to get rid of the litigation. That is the standard. If an individual had to admit liability in order to settle, with whatever consequences that might have, there would be very few settlements. I think General Motors is entitled to say that they support the settlement as fair and reasonable even though they do not concede liability. I don't know whether they have to say it any more particularly than that. But particularly because is kind of a strange phrase. I don't quite understand what it means. General Motors also supports the settlement offer as fair and rea-

sonable, although in its view plaintiffs and class members are not entitled to any recovery. I think General Motors is entitled to say what they are trying to say here.

Mr. Gottschalk: The reason we said particularly because your Honor, is that it is especially fair and reasonable in light of our views that the amount of recovery will be zero, therefore anything becomes fair and more reasonable. That is the reason we said, particularly because. I am obviously not wedded to any particular language, so I am open to the suggestion of other phrases.

The Court: I think you are entitled to a disclaimer of liability in whatever minimal language it takes to say it. Particularly because, to the casual reader, would be a little confusing. I think General Motors regards this as fair and reasonable particularly because we are giving away $200 out of charitable motives, is what you are saying.

Suppose it read that General Motors—

Mr. Harte: For the first time, since the mind of man runneth not to the contrary this eleemosynary institution General Motors is donating $200 to the common good. I think, particularly because, should come out.

The Court: Let's say, General Motors also supports the settlement offer as fair and reasonable, although in its view, plaintiffs and class members are not entitled to any recovery—I think that is a fair statement and one that we will leave in. I will take particularly because out and put although in.

Mr. Harte: Your Honor, I skipped one.

The Court: What one is that?

Mr. Harte: 12.

The Court: What page are we on?

Mr. Harte: This is on Page 13, after the first paragraph styled "Separate Views Of Plaintiffs Who Object To This Settlement." We believe that there should be a comma after the word, settlement, which is the sixth line

down, and the words "Or to return the car and obtain the full purchase price." This addresses, your Honor, at least a statement from plaintiffs' counsel that we are looking not only to a return of money in the form of damages, but possibly, your Honor, a return of the car in its entirety.

The Court: The best way to say it would be to say, amount of money offered—or we will have the right of recision which won't mean anything to anybody. What we have got to do is find some grounds between the highly enticing, you can drive this car for several years, return it and get all of your money back, which may delude a lot of people into believing that this is such a good deal that they will opt for it under any circumstances. And as far as I'm concerned at least it is somewhat improbable in terms of the overall case. But if we just talk about your right of recision, that is bare-bones legalese, it isn't going to help. Can anyone suggest anything in between that will describe that right, being informative and without being inflamatory—

Mr. Harte: Yes, your Honor, if I can think about that and in about ten minutes come up with some appropriate language—

Mr. Gottschalk: Could a phrase, or other, you may recover an amount substantially higher than the amount of money offered to you as part of the settlement, or, I was going to say other equitable relief—

Mr. Harte: Your Honor, that is like the Chicago White Sox score next week, it doesn't mean anything to anybody—although the Court Reporter indicates a loss—I would say, just give us ten minutes and we might be able to come up with something.

The Court: Could we say something to the affect, they believe if you reject, et cetera, then with a comma after settlement—and are seeking to have the Court order, seeking to have the Court allow you to return the car and obtain a full refund of this purchase price. The thought being that this is what they are after and of course that

is true, on the right of the recision, but it is putting it in language that suggests that it is an expectation and not a legal theory which we are giving any sanction to at the moment.

Mr. Gottschalk: Your Honor, I would object to that. I think even the Gour case, under State Law, doesn't involve return of the full purchase price.

The Court: That is what I was going to wonder.

Mr. Harte: Less appropriate credit.

The Court: What is the appropriate credit, a reasonable charge for the mileage you put on it?

Mr. Harte: That is what Gour said.

The Court: So that is far less than the full purchase price. That is if you have driven the car a couple of years.

Mr. Gottschalk: Your Honor, Mr. Walner has a suggestion which bears on this topic. Maybe we can address it simultaneously.

In his last page, if you have it, he has a suggestion that the basis of recovery is not limited or diminished at all by the fact that your car is or may be operating perfectly and you may be entirely satisfied with it. It goes on to say—the basis of this claim is the damages, actual and/or punitive, for substituting the engine without properly informing the buyers.

This leaves it open for the parties to argue what those damages are. If you couple that with the statement, that an amount substantially higher than that offer is being extended to you plus what the basis of the claim is, that is substituting the engine without properly informing the buyers—that would seem to leave open any other relief that the class members might later get, and also satisfy Mr. Walner on that particular point.

Mr. Harte: Yes, but recision is not damages, your Honor. That is simply articulating what has been said

here a different way. You are not telling them really what the primary basis of the plaintiffs' lawsuit is.

Mr. Walner: Your Honor, I would support Mr. Harte's plea to the Court for inclusion of some indication that recision is requested or advocated. I think it is an important request that is not immediately apparent to most consumers.

Mr. Gottschalk: Your Honor, at the top of Page 3 there is language that deals with the same issue. I wonder if we could look at that as a possibility. Page 3 of the notice as drafted where we say: "Plaintiffs are seeking both compensatory impunitive damages, as well as recision and other equitable relief including replacement of the engines." We have already said that on Page 3.

Mr. Harte: That doesn't say anything, Judge, it just doesn't say anything at all about what we are seeking here. If they are entitled to say you are not entitled to anything we are entitled to say what we are asking for.

The Court: Let's try this one. They believe that if you reject the offer you may recover an amount substantially higher than the amount of money offered you as part of the settlement and are claiming the right to return the car and receive the purchase price less a deduction for use.

Mr. Gottschalk: Can I ask if all plaintiffs will agree to that as a statement of their claims?

The Court: Let me read it again because it is the first shot. I have changed one word in it, listen to it again, gentlemen. I thought of a change of one word, listen to it again and let me read it to you again and I will read the entire sentence to put it in context.

> "They believe that if you reject the offer you may recover an amount substantially higher than the amount of money offered to you as part of the settlement and are asserting your right to return the car and receive the purchase price less a deduction for use."

I have changed, claiming, to asserting, and I have put your right instead of the right.

Mr. Gottschalk: A deduction for use, your Honor?

The Court: A deduction for use.

Mr. Harte: Thank you, your Honor.

The Court: I will make that change and who wants to object for the record—

Mr. Gottschalk: Well, I don't think it is available in this case, your Honor. Without further consultation I would like an objection noted for the record.

Mr. Harte: Your Honor, of course we have objected, I believe, to the second paragraph and the separate views of parties approving the settlement. I assume if that would be our objection it would make my objection to the other.

The Court: All right, we will make that change—do you have it, Mr. Gottschalk, or should I read it again—

Mr. Gottschalk: Could we get it from the Reporter, your Honor.

The Court: Yes—is that all of it, Mr. Harte?

Mr. Harte: There is no reference to punitive damages, your Honor. It may be inferred, and you may recover an amount substantially higher than the amount offered to you as part of the settlement, that will be the damages aspect.

Mr. Gottschalk: We said punitive and compensatory damages on Page 3 an amount substantially higher, your Honor, is exactly the phrase that came out of the last pre-trial conference when we were trying to capture the concept of perhaps something a little more than the amount offered here—

Mr. Harte: I think they have the idea that we are after punitive damages.

The Court: I think we will leave it as it is.

Mr. Harte: Judge, the next objection is under the paragraph styled "Inquiries." This is in the second line, and we feel that the inclusions of the words "by telephone or in writing" to the persons listed below would be appropriate because a lot of people just don't—

The Court: Why are you doing this to poor Stewart Cunningham—

Mr. Harte: There is no telephone number for poor Stewart Cunningham.

Mr. Gottschalk: That is what we are doing for Mr. Cunningham. The prior notices, the prior class notice all listed only Mr. Cunningham as a source of contact. Now I know that they have been contacting the Court and they have been contacting me.

The Court: He got overwhelmed and then I got letters complaining that Cunningham didn't answer letters.

Mr. Gottschalk: We think it is appropriate if people want a neutral source, with the Court, who to contact, that they have the name and address of the Court, but we then add the names of two specific individuals with telephone numbers, obviously hoping that inquiries will be diverted, at least to those two people and indicate further an attorney of their own choosing or a representative of the State Attorney General.

The Court: I don't want any suggestion here that they can inquire of the Clerk by telephone because two things are going to happen, one, he is going to be inundated and secondly nobody who answers the phone down there is going to know any answers anyway.

Mr. Gottschalk: We don't say by telephone.

The Court: I agree with you, you leave the telephone number off under Mr. Cunningham and you list it under the other two attorneys. So I will overrule that objection and leave it the way it is.

Mr. Gottschalk: Your Honor, there is the suggestion, if I may, that comes to me from Mr. Benedetto of the Illi-

nois Attorney General's office and Mr. Mulack. I will show it to Mr. Harte. It would be a change of address for Mr. Mulack reflecting that he is a Special Assistant Attorney General of Illinois, care of Michael A. Benedetto, Jr., Consumer Protection Division, 228 North LaSalle Street, Chicago, Illinois 60601, with two phone numbers at Mr. Benedetto's office. They believe they will be better equipped to handle calls if they come in in any significant numbers to those phone numbers.

Mr. Harte: Your Honor, I would object to the styling "Consumer Protection Division." I don't think that is necessary to be placed within the caption, if you will, of the plaintiffs attorneys approving a settlement—reading on—does not give the appropriate, an appropriate reflection upon the attorneys for the plaintiffs' approval of the settlement.

Mr. Gottschalk: I think it is there to make sure the letters get to the right person in the right office.

Mr. Harte: I think Michael Benedetto is known within the Attorney General's office, or if he isn't, possibly he should be—

Mr. Gottschalk: Mr. Benedetto indicates that it will be no problem to delete the title, Consumer Protection Division.

The Court: Having once been in that office I am not as sure of that as he is. But I guess if he agrees we will take it out.

Mr. Harte: Your Honor, we would ask that the attorneys for plaintiffs objecting to the settlement being known as Charles A. "Pat" Boyle. I don't think that—

The Court: Well, Mr. Boyle can certainly tell us how he wants to be known.

Mr. Harte: Sometimes late at night he has difficulty mentioning his name.

Mr. Gottschalk: Which spelling of Charles?

Mr. Harte: Charles A. "Pat" Boyle.

The Court: Any way Mr. Boyle wants it is fine.

Mr. Harte: Judge, the last objection, number 16, we object strenuously to the statement within the notice that the consumer can consult with "A representative of the Attorney General of your State."

Now we have one Attorney General listed—

The Court: Just a moment, counsel, you lost me. I ran out of pages at 14—

Mr. Harte: This is Page 14.

The Court: I see it, I'm sorry.

Mr. Harte: It is the last sentence, the words "or with a representative of the Attorney General of your State."

The Attorney Generals are not a part of this case, their intervention was denied. They were styled amicus, both in this court and in the Seventh Circuit Court of Appeals. All of them appeared in supporting the settlement with the exception of three, and this was, I believe, improperly, unduly and prejudicially load this notice in favor of the proponents of the settlement. Now if we are to be fair and there are two places of which the consumer can get information, one would be Mr. Boyle who objects to the settlement, the other Mr. Mulack, or Mr. Benedetto, who approved the settlement, both on the plaintiffs' side, then the consumer can call his own attorney if he so chooses. But to put in here, he also may call the Attorney General in each state, or in their respective states, all of whom would be then equipped to give them the line, so to speak, to accept this settlement would be inappropriate.

The Court: Mr. Gottschalk.

Mr. Gottschalk: Your Honor, I think it is appropriate because it is the fact that consumers are free to consult with representatives of the Attorneys General who are already described in this notice as having been participants in negotiating this settlement. The sentence is phrased neutrally, there is no suggestion that they should contact them as a proponent of the settlement or anything

else. There are a few, obviously, the fact is there are a few who have not agreed to the settlement. The majority has. But nonetheless it seems to me particularly in view of the complaint that we are getting about the volume of calls that people ought to know one source of information about the settlement if they choose to contact it is the Attorney General of that state.

The Court: Well, that would normally be true except that the Attorneys General of the states of course have positions in this case. So despite their character as attorneys for the people of the state, they are litigants here. I think it is appropriate to strike that. We will put a period after choosing.

Mr. Harte: Those are all the objections that we have. At least I have, at this time.

The Court: Mr. Walner, do you have some?

Mr. Walner: Just a couple, your Honor.

The Court: I have yours here.

Mr. Walner: I noted that they mentioned that there were three cases opposing it. So I picked up in my papers a fourth, and as I sat here I recalled a fifth.

The Court: That is the trouble with having these hearings, they go on so long you keep thinking of things.

Mr. Walner: The fifteen-some plaintiffs in Mr. Mulack's case, I understand there were plaintiffs including the first named plaintiff in the Attorney General's case who is opposed to the settlement. We would have a greater number than the total case filed and it would more accurately reflect the exact situation if we stated that the plaintiffs in five cases opposed it. It is a small point but it does bring our number close to the seven.

The Court: What page is that on again?

Mr. Gottschalk: Page 13.

First of all, I assume the fourth case is Mr. Walner's later filed case on behalf of the Skokie Traditional Congregation—

Mr. Walner: That is correct, your Honor.

Mr. Gottschalk: With respect to that, your Honor, as phrased here, plaintiffs, you say, in three of the cases object to the settlement offer. I think it is important that we not establish any precedent here that people who filed later cases after the class certification automatically are nominated class representatives and are treated as such. While it may well be that Mr. Walner, who is plaintiffs' counsel in two cases, both plaintiffs objecting to the settlement, apparently, he definitely has those two cases, but in only one has the Court treated the plaintiffs as a class representative. Now this, as I read it, does not identify the plaintiffs being class representatives, so I don't have a problem seeing the plaintiffs in four cases pending before the Court object to the settlement offer.

Mr. Walner: Except it is now five, your Honor.

The Court: What is the fifth?

Mr. Gottschalk: The fifth, your Honor, is the fact that apparently they are alluding to the idea that because the State of Illinois has 125 plaintiffs that there might be a few of those who would object to the settlement offer whereas others support the settlement offer in the same case. So the question is how do you count that case. Mr. Walner is saying the plaintiffs in five cases, counting the Illinois Attorney General's case as one, we have counted the Attorney General's case down here as one of the seven where plaintiffs approved the settlement. Having gotten through that just cursory, your Honor, in a discussion, I am not sure as to how best to count in this situation.

Mr. Walner: If you take their literal language, your Honor, I don't know how to get around the fact that three should become five. It is simply plain facts.

Mr. Gottschalk: The Court of Appeals noted, your Honor, that it is sometimes hard in this type of litigation to delineate between the plaintiffs and plaintiffs' counsel in terms of who are really the class representatives. From

plaintiffs counsels' standpoint I think it is correct changing three to four. If you want to believe plaintiffs.

The Court: You can say plaintiffs' counsel in four of the cases, or we can say, plaintiffs in some of the cases pending object, plaintiffs in some of the cases approve and leave the number out entirely.

Mr. Gottschalk: I favor that, your Honor.

Mr. Walner: I would accept that also, your Honor.

The Court: All right, take the numbers out and put in the word, "some."

Mr. Walner: With regard to Item No. 2 on our paper, your Honor, I think the classes, the class members are entitled to be told that they were—will not be expected or asked to pay any costs or attorneys' fees on an out-of-pocket basis. I think most consumers are not aware that the class representatives assume the burden of costs and that the fees essentially are contingent. As a matter of fact I have had inquiries, a number of times, from lawyers who receive class notices who are representative of the class members and asked if there would be any obligation for fees and costs to passive class members in determining whether or not they should opt the person out of the class. So I think it is appropriate to give them this advice.

Mr. Gottschalk: Your Honor, I object to that because I just regard it much the way Mr. Harte regarded one or two things which I believe the Court accepted. For example, the statement that an appeal was likely. I don't see how the Court at this point can assure every class member that he will be held harmless from any costs, particularly attorneys' fees or other types of cost in this litigation. We are not at that point. I can see costs possibly incurred if a person wants to consult with his own attorney about this settlement offer, about whether he becomes more active in the case. Obviously those sort of costs may be incurred. There may be discovery costs, as against one or more class members, or at least expenses that people will have to bear. None of those issues can be resolved

now with the flat statement that they are absolutely immune and protected from costs and fees. We make no statement one way or another and I think that is appropriate.

The Court: Where would you suggest it go?

Mr. Walner: I would suggest it go, your Honor, after the statement that they are not obliged to do anything if they want to remain in the litigation. I think it is appropriate there to tell them that they won't incur expense. If you want to accommodate Mr. Gottschalk's remarks you can say, unless they consult their own private attorney at their own initiative. But we can certainly tell them that they won't incur any expenses from this litigation by way of costs or fees.

Mr. Gottschalk: There are class members, your Honor, that are potentially very knowledgeable corporations which bought 1977 Oldsmobiles which may very well have had knowledge we believe have knowledge of the engines, et cetera. We don't know what their position is with respect to this settlement, of knowledge or consent, but we would not propose to allow discovery to rest without pursuing at least some class members with respect to their expertise and sophistication in this area of engines, and that means they may consult with their own attorneys for that or incur expenses. I just disagree that it is factual.

Mr. Walner: Well, they are certainly not obliged to consult private attorneys, they are not obliged to consult private experts. I think they understand if they do anything unilaterally, on their own, and somewhere outside of this litigation, they would have to pay for it. I think it is important we let them know that they will incur no costs from this litigation if they simply desire to remain in the litigation and remain a passive claimant.

The Court: That is Page 9 of the second to the last paragraph. Regardless of whether they are favorable or adverse to you—that contains a handful of possibility of some adverse consequence to remaining in the case. A very general and vague hint, the word adverse, I suppose

might cause somebody to notice—and wonder whether that meant that they might be subject to some assessment of costs. But on the other hand, I agree with Mr. Gottschalk that I don't want to get out a statement which guaranties them absolute immunity from costs in connection with this suit.

Is there anything between those two positions you can think of that will resolve the problem?

Mr. Walner: I think if we tell them, your Honor, that in the event they remain a passive claimant, and undertake not to obtain counsel or experts outside of this litigation on their own initiative that they won't be assessed any costs as a result of the litigation.

The Court: Something like under normal circumstances plaintiffs remaining in the case will not be assessed any costs, would that—

Mr. Gottschalk: Yes.

Mr. Walner: Yes, I think the under normal circumstances a very reasonable phrase, your Honor.

The Court: Let's see if we can make it come out right.

Class action plaintiffs are not assessed costs—will that be it?

Mr. Gottschalk: Your Honor, the plaintiffs may be, but it seems to me under normal circumstances class members who do not otherwise participate in the litigation are not assessed costs or fees.

Mr. Walner: I would rather not use—

The Court: Passive class members.

Mr. Walner: I would rather say class members. I don't know that I want to use the word—I think the word or the phrase, who do not actively participate, may be confusing to them.

The Court: Well, under normal circumstances it is supposed to cover that.

Mr. Walner: Under normal circumstances class members other than the plaintiffs in this case.

The Court: Well, other than the named plaintiffs. How about passive class members are not assessed costs, under normal circumstances passive class members in a case of this type are not assessed costs or are not liable for costs of litigation.

Mr. Walner: That is fine, your Honor.

The Court: Passive class members in cases of this type are not liable for costs of litigation.

Mr. Gottschalk: So long as it is understood that under normal circumstances leaves open what I think we are all contemplating as being special circumstances here, we'll go along with that without objection.

The Court: All right, we will leave it that way.

Mr. Walner, anything else?

Mr. Walner: I would like Sub-paragraph A, on Page 2, Mr. Gottschalk didn't seem to object to it before, advising the people that the basis of the claim is not based on any unhappiness or malfunction of the car. That it doesn't diminish their claim in any respect. I think B, has been taken care of already—

Mr. Gottschalk: If B is out we are focusing on A, your Honor. I would object as phrased.

The Court: The problem I am concerned with is engine interchange is the heart of the lawsuit, I think it's been adequately explained and we are tending to refine this to the point where it may interfere with the comprehension of the lay reader. So I will sustain the objection to that Paragraph A and Mr. Walner's suggestion 3-A. I don't think we have to add that.

Mr. Walner: I would also like to qualify, although I don't have it in my papers, your Honor, although there is a considerable discussion about the question of the exclusion of the transmission and related components in the

case. I would like something added to make it clear that the issue is at least the subject of review for inclusion in the case by those objecting plaintiffs seeking to assert it. As it stands it is at the bottom of Page 3, your Honor. It reads that it is unequivocally been eliminated from the case, and I think the opportunity to have that further considered is something that is correct and is not included and may be misleading without that.

The Court: Well, I unequivocally eliminated it from the case. I don't think there is any doubt about that.

Mr. Walner: No, I am not suggesting that there is any doubt with that, I am suggesting only, your Honor, that we seek, if the case proceeds we will undoubtedly seek to have that reviewed.

The Court: I understand that, but as the case stands now in the context of which this settlement is going forward that issue is not in the case.

Mr. Gottschalk: Your Honor, may I just have a moment to confer on that—

The Court: All right.

Mr. Gottschalk: Your Honor, it might help a little bit. I have another problem in mind, in that sentence. It also goes to Mr. Walner's point to say, claims relating to other components including transmissions and rear-drive axles are not pending before this Court for adjudication in this litigation. I say that only because of perhaps an undue caution as a lawyer, that in this court, who really meant your Honor, Judge McGarr, not the Northern District of Illinois, and of course one transmission is filed in this District. So I think we better specify, in this litigation, so that it is clear later on when we do talk about the other transmission case, that that is other litigation. So the changes will be—I don't think we need the word now—are not pending before this Court for adjudication in this litigation. Just adding the phrase, in this litigation at the end.

The Court: Any objections to that—you think, court, might be accepted in the general sense as the Northern District—

Mr. Gottschalk: I can see some quibble about that in the future.

The Court: Well, Mr. Walner's objection troubles me only because the settlement is the settlement even though we mentioned that there are other contentions. If the substitution of engines is what the settlement is based on, then we are opening up, at least in the context of this case and this settlement, a somewhat extraneous issue, and I suppose it is necessary to mention it as it has, but to mention it only to say that it is a contention, but that issue is not pending before this Court for adjudication in this litigation and therefore it is really not part of this settlement.

Mr. Walner: Well, it is part of the settlement in the sense that they are asked to release the rights to your Honor.

Mr. Gottschalk: Your Honor, it seems to me in the first sentence what their contention is, and we can say in the second sentence, and we do, those are not pending, we can say not pending before this Court for adjudication, then we go to fully describe later on where those claims are pending. There is no confusion in this.

The Court: It is true that everybody is told that when they settle they are settling transmission claims if they have them. It covers everything. Nobody disputes that. But on the other hand, that is clearly explained at that time and that is true as it is explained and yet it is also true here that the transmission claims are not pending before this Court in this litigation. So I will add the phrase, in this litigation, and overrule the objection to the sentence as it now stands.

Anything else, counsel?

Mr. Walner: No, nothing that has not been raised.

Mr. Mulack: If the Court please, the State of Illinois would like to address itself to Point 1 of Mr. Walner's objections, those are dealing with the number of plaintiffs

that are objecting and the number of plaintiffs that are accepting the settlement.

The Court: Well, have we solved that by saying, some?

Mr. Mulack: I believe you did, but we would like to be on the record showing our concern that a great emphasis was made by objecting plaintiffs at the last hearing as to the numbers of people that were involved in the Executive Committee and arguments were made in the Appellate Court as to percentages of people who may or may not have objected to the settlement. We would state, as one of the class representatives, the State of Illinois, that we would like the language, plaintiffs' counsel, in three of the cases pending before this Court, namely leave plaintiffs' counsel in, but also them leave the number, in this case three, and in the case of those supporting the settlement, seven. The idea being that class counsel, particularly those who have argued the case, are the ones who have been involved in all of the transactions and those are the ones who are, of course, more tuned and learned on the questions presented. We would strongly urge that the Court leave in the number three as to those who are objecting and the number seven as to those who are approving, but process it by saying plaintiffs' counsel because it is really the counsel who are involved very deeply and not necessarily the numbers of the class altogether.

The Court: Is it precisely true that plaintiffs, meaning all of the plaintiffs, in any one case, has approved of the settlement. We don't really know that, do we. It is really the counsel.

Mr. Mulack: Really the counsel, that is correct, because we represent the State of Illinois, 113 named plaintiffs, that have been filed with this court. We don't know of too many of the named plaintiffs who are objecting in terms of raw numbers, so we being the State of Illinois, the class representatives would like to be on record as favoring the settlement along with the other six class representatives who have been appointed by the Court, whereas there are

only three class plaintiffs who had been named representatives who are objecting.

The Court: Mr. Harte.

Mr. Harte: Your Honor, to place in this document the fact that plaintiffs' counsel object to the settlement means that all this is is a claim by attorneys, that possibly the money isn't enough for specific clients.

The Court: Isn't that all it is, you haven't canvassed all of your clients, the members of the plaintiff class, to see how they feel about it. It is your judgment in the matter.

Mr. Harte: Your Honor, we have received information, certainly from the plaintiffs that we represent, who vehemently and violently object to this settlement and we have received information from other plaintiffs who are represented by other attorneys that they object to the settlement. As a matter of fact, some plaintiffs who object to this settlement made their opinions known in the daily newspapers.

The Court: I don't dispute that, counsel. The focus of my inquiry is, is it possible to truthfully say as to any class of plaintiffs that they all object or all oppose. Isn't it really the attorneys' expression of what they believe the best interests of the class are.

Mr. Mulack: That's right, or the class representative to have been named.

The Court: The class representatives, I should say.

Mr. Harte: It may be that the Attorney General may take that position. It is certainly not our position that we are taking a position contrary to the representative parties in this case.

The Court: No, I am not saying that.

Mr. Harte: Certainly Betty Oswald objects to this, as do the other plaintiffs we represent.

The Court: I am not suggesting any impropriety at all. I am saying that in any class I doubt that there is unanimity on the subject. I think the best way to resolve it, Mr. Mulack, is that we will leave it the way it is and let the record reflect your objection in this regard.

Mr. Mulack: Thank you, your Honor.

The Court: Anything else, counsel?

Mr. Harte: Your Honor, just one other point and I would like to reiterate this so that I'm sure it has been. That is, in the judgment of your Honor plaintiffs' counsel, as opposed to plaintiffs, and in view of the Gour decision, take the position that again this notice should not go out. At least until the Court has conducted a hearing to determine the principal question, and that is that the finding that the proposed exchange, that is the consideration providing each individual class member with a meaningful opportunity to obtain satisfaction of his claim. It is not at this stage, as I understand it, since I believe this is a very new procedure. It is not necessary for the Court to conduct a hearing and then determine the considerations appropriate to settle the case. It is, I believe, sufficient that the Court conduct a hearing to determine whether the amount of money that is being proposed is within the ballpark. In other words, that it is not "nominal consideration." I don't believe that the proceedings to date identify that kind of a hearing which will permit the Court to make the decision that $200 plus the insurance policy is something more than just "nominal consideration."

I would state to the Court very respectfully that the transmission case, being out of this case now, those issues, which separate, I suggest to you, a substantial claim of the consumer class in this case, delimits the consideration of $200 to a point where it could very well be just "nominal consideration."

So we would request again, if we haven't requested it before, that the Court has some kind of a hearing, no matter how brief or how extensive, to weight again this

question. That is, is it just "nominal consideration" which is being offered by General Motors.

The Court: Well, I won't attempt to give my reasons for that in too great detail, but I think you are entitled to some brief statement of the way I feel about that.

This is, and to my mind has always been, an engine case. A two-hundred dollar settlement, which was negotiated and arrived at by the parties was the subject of extensive hearings on its fairness. I found it to be fair and I emphasize that this doesn't mean that I found it to be nominal. I found it to be reasonably compensatory for the injury in the context of settlement as distinguished from a full-blown litigation.

As I read the Seventh Circuit opinion the problem they found with that was not on the basis of a determination of the reasonableness of the settlement. But basically it was because of what they regarded as an inappropriate limitation on some aspects of discovery prior to the hearing. I think the Seventh Circuit has very clearly told me that while they had very great difficulties with the settlement as a mandatory settlement, if it were optional to the parties they think it would be fine. General Motors seized upon that to make it optional and that is where we are. We now have a formal notice of the settlement. I have listened to the objections and ruled on them. I intend to approve the notice in the modified form that we have arrived at today.

I do understand your position, Mr. Harte, and it is obvious from my remarks that I don't agree with them. So you have made your record and we have got our form of notice and let's get it out. What's the timetable on it now?

Mr. Gottschalk: Your Honor, I think the notice can be printed within a matter of—everything should be ready to go out in three to four weeks, maximum, now that we have the form of notice.

The Court: All right, gentlemen, let's set a status report for September 21st just so I don't lose track of

you and you don't lose track of me. I assume the notice will be out and we will have some estimate of the extent of meaningfulness of the response by that time.

Mr. Boyle.

Mr. Boyle: Your Honor, if I may, please. Perhaps you have ruled upon the advisability and I didn't hear you, perhaps you can tell me again.

We sought at one time, as you know, to provide a letter indicating the position of the representative parties as well as their attorneys, vis-a-vis the case, and I know that you refused that motion. But I also ask, in light of the decision in terms of the publicity that has been attendant with the settlement, and what I foresee to be the publicity of forty-seven Attorneys General and General Motors and six of our co-counsel who have agreed with General Motors to accept $360,000, that General Motors certainly will have a lot of support for this $200 settlement. I say, perhaps, that maybe you can consider that General Motors, although the plaintiffs are not permitted to give their opinion with respect to the fairness of this offer, of where this case is going, or even in the light of Gour, where you had a single plaintiff versus General Motors, to perhaps your Honor consider enclosing a copy of the Seventh Circuit Court of Appeals' opinion to the class members to show them and to explain to them that General Motors' activities and actions that were brought forth in an extensive hearing before you, and that the ramifications that the Court of Appeals alluded to with respect to the punitive aspects of this case. I think it would be neutral in some instance. I don't believe this country is such that attorneys who represent parties are in the position that I kind of find myself in today, in the objecting plaintiffs, namely there are 67,000 people who do not know the facts in this case and do not know that there were Chevrolet engines with Oldsmobile bodies that were sold as Oldsmobiles.

I would suggest, respectfully, that a meaningful way, in order to get the people thinking about this case, is to

include a copy of the opinion. I wish you would just consider it.

The Court: Well, both sides have had input, and I have attempted to profit by that input to get out a notice which I think is a balance and fair presentation. I think we have achieved that as well as it can be achieved. The motion to include the Seventh Circuit opinion in this or any other communication is denied.

Mr. Boyle: Thank you, your Honor.

The Court: Did you have anything else, Mr. Boyle?

Mr. Boyle: Yes, your Honor. If we are going to get inquiry with respect to other pending litgation I have already asked General Motors and I got a very curt reply. I think it is incumbent upon General Motors to provide plaintiffs' counsel with a up-to-the-minute report on all pending litigation involving General Motors and the charge of engine substitution and/or transmission substitution. We learned for the first time today, four hours ago, General Motors, with its legions of attorneys at the trial level, and now affirmed in the Appellate Court of Louisiana, is subject for one car alone of over $9400. General Motors, as we know, the minute that you approved this settlement, ran out throughout the entire country—I have heard from counsel from both sides of the ocean—they have agreed with them to settle their cases, to pay $60,000 for their concurrence of this settlement. I think that fact, as to why everybody is in favor of this settlement, should be, and should get, some appreciation as to why this settlement has received such unanimous endorsement among forty-seven Attorneys General, seven co-counsel and General Motors. We are going to be asked on the phone, Mr. Boyle, what is the status of my case, so and so, or where is the case going. We don't know. General Motors is now sitting on what I suggest might be agreement. We have seen the agreements here. I know of agreements in three other states. I am just saying, if we are asked to comment on the facts we ought to have the facts. I don't think the Court has the facts. So I suggest that you ask them,

please, to provide us with the information relative to all other pending cases in the country.

The Court: Mr. Gottschalk.

Mr. Gottschalk: Your Honor, first of all, I take strong exception to the tenor and substance of Mr. Boyle's remarks. But to focus specifically on Page 7 of the notice, it is proposed and it will be done that every pending class action case involving class members, engines and cars, will be identified by caption as a pending case in that state. We will be happy to provide the information as to the case named, and the plaintiffs' counsel, to that extent, in all the cases that will be identified wherever class actions are pending which may involve any of the class members here. I have no problem with that. Beyond that I am not sure what Mr. Boyle wants or would need me to do.

Mr. Boyle: If I may respond briefly. When they have gone out and settled a case and made the same deal with other plaintiffs' attorneys representing, or purporting to represent class actions, I suggest that pending doesn't make any difference. That is where they haven't made a deal with somebody. I suggest to the Court that we be entitled to show or to have as facts the information that would indicate to us what has happened to those other losses. I don't think it's really unfair to ask General Motors, who is now faced, frankly, as little as we now, and there might be more Gour cases, frankly. This is here for liability only and if there is any question in anybody's mind in this courtroom as to what General Motors did, the Appellate Court said that they did it for profits, to put money in their pockets, and the point is that General Motors has in fact settled many of these cases and the deal that they made I suggest is the same deal that they made with respect to six of our co-counsel in here, the seventh being the Attorney General of the State of Illinois. I think that goes to the peoples' right to know as to why there is such unanimity among those people who are approving the settlement even though the Court of Appeals has said that the case was decided, or at least conceived

in terms of the settlement in a way which prejudiced those members who are now being given a notice by the same people who, you know, co-prejudiced them.

Mr. Gottschalk: The only people, your Honor, who are being identified as class members and participating in the approval of this settlement are the Attorneys General and six private counsel and General Motors. As to all of those the terms, conditions of the settlement to the extent they are relevant to all, including why the agreement, with respect to the fees and the other elements of consideration are fully disclosed. It seems to me to that extent all of the information is presently available to Mr. Boyle. Now he is talking about a number of individual cases which have been settled on terms that are not more favorable than the terms of these cases here, and he has made a point of that. But they have nothing to do with the class representation or with the extent of approval or disapproval as it is being communicated by this notice or publicly.

The Court: I am not precisely sure what you are asking General Motors to do. I certainly have the gist of it. I don't agree, Mr. Boyle, that that should be done so I won't enter any order to that affect.

You mentioned, and I am totally unfamiliar with the Gour case in the form that I have before me today that was just handed up. You mentioned something about ninety-seven hundred dollars.

Mr. Boyle: That's right.

The Court: Is that what Gour is getting?

Mr. Boyle: He is getting $8,122. His attorney is getting $2,000 and 1300 is roughly being taken off at 8 cents a mile.

The Court: So he is getting the value of the car.

Mr. Boyle: Less 8 cents a mile.

The Court: Less mileage or charge for use as we put it.

Mr. Boyle: He is getting sixty-nine-hundred dollars, roughly, or sixty-eight-hundred dollars.

Mr. Gottschalk: I don't have any idea what the computation is, but the formula is correct under that decision. It may well be appealed further.

The Court: I just wanted to be sure that the Gour decision included, as I thought it did, some reduction from the purchase price of the car for whatever use he had on it.

Mr. Harte.

Mr. Harte: The Court has set this for status on September 21st. They have stated that it will be three or four weeks before the notice goes out. Is there a time limitation by which a person accepts?

The Court: What does the notice provide?

Mr. Gottschalk: Sixty days.

The Court: I have no thought of anything except to get a progress report on how it was going and maybe that date is too early.

Mr. Gottschalk: To accept this offer you must within sixty days after you receive this letter—

Mr. Harte: Sixty days is sufficient, your Honor, as far as we are concerned.

The Court: You figure it will be out about the first week of August—

Mr. Gottschalk: That will be about right.

The Court: So that will be about right, let's let that date stand.

Mr. Harte: The second thing that I would bring up would be the release form. There has been a lot of water under the dam, so to speak, and I am just wondering if the same release forms or the acceptance papers are to be supplied.

The Court: Didn't I approve the release form somewhere down the line a while ago?

Mr. Gottschalk: It was attached to our Attorney General's agreement filed with this Court in December of 1977. There are two forms which are the agreed upon forms. One is a claim form, your Honor, and one is the release form. There was a typo, a prepositional typo. We corrected that on the top of the form for the plaintiffs, and with respect to the release it is exactly the same form with the Buick and Pontiac purchasers. This will be printed back to back and will be sent with the notice. It will be the claim form and release referred to in the notice. The only amendment to that, your Honor, is with respect to the claim form. There are a few states where this offer has also been approved for communication and we will add a paragraph in those few states which makes it clear that although they may get two notices from different courts there is only one offer, they are not to assume by filling out two of these things that they can get double compensation. I will give these to Mr. Harte and Mr. Boyle. They are identical with those exceptions to what has been filed previously.

Mr. Harte: Your Honor, if we have objections to these papers, why possibly—

The Court: You might bring them to my attention.

Mr. Gottschalk: Those have been pending for several months.

Mr. Harte: I didn't know, frankly, nor did anybody on our side, that these were the papers that you were going to supply with this offer.

Mr. Gottschalk: I will find transcript references, there is no question that that has been represented to the Court.

Mr. Harte: Then I made a mistake. That is why we have erasers on pencils. But I would like to have time, possibly two weeks—

The Court: Not to the extent that it will delay the schedule here. I assume they will have to be printed.

Mr. Harte: I am not suggesting, but at least some time to address objections to them.

Mr. Gottschalk: We have been through Mr. Walner's objection to these forms. This Court has held considerable colloquy on these forms already, your Honor.

Mr. Harte: Judge, all I want, frankly, is three days, and the Court can rule on the objections by the mail. They are going to take three or four weeks to get all of this together.

Mr. Gottschalk: We are going to be printing, which is the problem.

Mr. Harte: I agree with you, but I just don't see—

The Court: Well, you have had them, they have been in the file and we have talked about them and it did not occur to me that anybody had any objections to those. I thought they were pretty well fixed. Go ahead, Mr. Gottschalk, with your program and order the printing and so forth. If you want to get to me by messenger or by letter any written objections to these, let's say by—today is Thursday—by Monday or next week, and if I determine that it gives me any real concern I will call the parties and set the matter for an immediate hearing, otherwise I will just write to you and indicate there is no problem. So why don't you do that.

I guess that concludes our business today, gentlemen. I will see you then, I think I said on September 21st.

Mr. Gottschalk: Fine, your Honor. A confession or error, because of a personal situation we are remiss in getting our summary judgment reply brief in, we will have it in tomorrow with a motion to file instanter.

The Court: Well, why don't I grant the motion today. file it tomorrow.

All right, that will be all counsel—I would appreciate it if you would all clear out quickly because there is another case awaiting in the spectator's section.

(Which were all the proceedings had in the above-entitled matter on the day and date aforesaid.)

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE GENERAL MOTORS CORPORATION
ENGINE INTERCHANGE LITIGATION

MDL DOCKET NO. 308

NOTICE OF OFFER TO SETTLE CLAIMS

This Notice is directed to each original owner (other than General Motors franchised dealers) of a 1977 model Oldsmobile who satisfies both of the following two conditions.

1. The owner must have entered into a written purchase contract, dated on or before April 10, 1977, with a General Motors franchised dealer or his representative for a new and unused 1977 Oldsmobile; and,

2. Such 1977 Oldsmobile must have been delivered to the owner equipped with a V-8 engine produced in a General Motors plant operated by the Chevrolet Motor Division of General Motors.

If you meet of these conditions, you should carefully read this Notice in its entirety, and make sure you understand it before taking any action based upon it. If you do not meet both conditions, this Notice is not directed to you, and you should disregard it.

OFFER TO SETTLE CLAIMS

This Notice communicates an Offer of Settlement of $200 and transferable mechanical insurance coverage, as described below, which is being made by General Motors Corporation, a defendant in this and other litigation concerning 1977 Oldsmobiles equipped with Chevrolet pro-

duced V-8 engines. If you meet both conditions above, then you are eligible to consider the Offer of Settlement.

This Notice describes the Settlement being offered, the claims being asserted against General Motors and the effects on your rights of either accepting or rejecting the Offer of Settlement. You may have received an earlier notice from the Clerk of the Court dated March 16, 1978. The description of the Settlement Offer and the effects of accepting it are as set forth in this Notice, and you should disregard the description provided in the earlier notice.

In allowing this Notice to be communicated, the Court does not indicate any opinion or finding that the Settlement described below is fair or adequate. Nor does the Court express any opinion that you should either accept or reject this Offer of Settlement.

DESCRIPTION OF THIS LITIGATION

In this class action litigation, plaintiffs are alleging, on behalf of themselves and the class they represent, that General Motors violated the Magnuson-Moss Warranty Act, a federal statute, by failing to disclose that the 1977 model Oldsmobiles which they purchased were equipped with V-8 engines produced in General Motors plants operated by its Chevrolet Motor Division. Plaintiffs allege that there is a difference in the quality and value of the Chevrolet and Oldsmobile engines. Plaintiffs are seeking both compensatory and punitive damages, as well as rescission and other equitable relief including replacement of the engines. They also are seeking attorneys' fees and costs incurred in the litigation.

General Motors denies plaintiffs' allegations and asserts that the Chevrolet engines were comparable to the Oldsmobile engines in all material respects and they met General Motors' engineering standards, and further that its conduct has been lawful in all respects. General Motors has asked that the actions be dismissed and that plaintiffs and class members recover nothing.

The only issues before the Court raised by complaints and certified by the Court for the class action pertain to the alleged substitution of engines. No trial has been con-

ducted, and the Court has made no decision concerning the claims of the plaintiffs. Therefore, this Notice should not be interpreted as an opinion of any kind about the validity of any of the claims or defenses being asserted in this litigation.

Plaintiffs also contend that General Motors substituted other power train components, including transmissions and rear drive axles, in place of components allegedly warranted as being standard equipment on those Oldsmobiles. Claims relating to other components including transmissions and rear drive axles are not pending before this Court for adjudication in this litigation.

TERMS OF OFFER TO SETTLE

In return for a Release of claims, General Motors offers you a cash payment of $200 and, if eligible, transferable mechanical insurance coverage, as explained below.

Cash Payment

General Motors offers to you, as an eligible original owner of a 1977 Oldsmobile, the total sum of $200.00.

Transferable Mechanical Insurance Coverage

If you still own your eligible 1977 Oldsmobile described above, General Motors also offers you transferable mechanical insurance coverage in the form of a Special Mechanical Performance Certificate underwritten by Motors Insurance Corporation covering the power train (engine, transmission, and drive axle) of your 1977 Oldsmobile automobile for 36 months or 36,000 miles from the date of original delivery of that automobile to you, whichever occurs first. Many of you already have received free from General Motors a non-transferable version of the Special Mechanical Performance Certificate which otherwise offers identical coverage.

If you no longer own your eligible 1977 Oldsmobile described above, General Motors also offers you the transferable mechanical insurance coverage on any one 1977 model General Motors passenger automobile of which you

are still the original owner. The mechanical insurance coverage commences from the date of delivery of the insured automobile to you. If you do not still own the eligible 1977 Oldsmobile or another eligible 1977 General Motors passenger automobile as described above, you will not receive the insurance coverage and certificate.

Some of you who are eligible to receive the insurance certificate may previously have purchased a mechanical insurance policy or mechanical service contract covering your 1977 Oldsmobile or other eligible 1977 General Motors automobile which may still be in effect. The protection offered under those policies or contracts may be different from the protection afforded by the Special Mechanical Performance Certificate offered as part of this Settlement. The protection afforded by each policy or contract must be determined by reference to its particular terms and conditions. Similarly, in the event there are questions about any cancellation or refund rights relating to such policy or contract, such rights are determined by reference to the terms of the particular policy or contract.

The Release

In return for the above described cash payment and, if eligible, insurance certificate, each of you who wishes to accept the offer must sign a Release of claims. The Release you will be required to sign should you choose to accept this Offer of Settlement is enclosed with this Notice. *Once signed, the Release will significantly and finally affect your legal rights. You should note that the release covers claims which are not pending before the Court in this litigation, as well as claims which are before the Court. You should therefore read the Release, and the discussion of the Release which follows, very carefully.*

EFFECTS OF SIGNING THE RELEASE

The Release will release General Motors, its subsidiaries, affiliates, directors, officers, employees, successors and its independent franchised dealers from any and all claims which you may have now or in the future based upon, arising out of, or relating to, the installation, incorporation,

or use in any 1977 model automobile produced, manufactured, assembled, advertised, merchandised, or sold by General Motors or any of its franchised dealers of any engine, component, part, or assembly produced, manufactured, or assembled by any division or subsidiary of General Motors, or any supplier to General Motors other than the division of General Motors which marketed or sold such automobile.

If you choose to accept the Offer of Settlement, you will *not* be required to release any claims you now have or hereafter may have against General Motors or any of its dealers arising out of any defects in the design, material or workmanship of any kind in their automobiles.

The Release will permanently and forever bar you, if you accept the Offer of Settlement, from any future or further recovery for claims being asserted in this litigation, and your claims will be dismissed with prejudice by this Court. The Release will also permanently and forever bar you from suing or recovering on *all claims* covered by it, regardless of whether those claims arise under federal, state or common law and regardless of whether or not those claims are presently, or may later be, the subject of this or any other pending or future litigation brought by you or on your behalf. By accepting the Offer of Settlement and signing the Release, you will have no right whatsoever to participate in or receive part of a later recovery, if any, against General Motors or its dealers, whether by judgment, settlement or otherwise, and regardless of whether such recovery may be more favorable than this Offer of Settlement.

General Motors is currently aware of litigation pending in California, Connecticut, Florida, Louisiana, Minnesota, Missouri, New Jersey, Ohio, Oregon and Texas, in which the complaints filed with the courts include class action allegations on behalf of certain residents of those states who purchased 1977 Oldsmobile automobiles and received such automobiles equipped with V-8 engines produced in a plant operated by the Chevrolet Motor Division. The

caption of the lawsuit that is pending in [state] is: [caption to be inserted in notices sent to residents of state in which action is pending.] By accepting the Offer of Settlement and signing the Release, you will have no right whatsoever to participate in or receive part of a later recovery, if any, against General Motors or its dealers in such state action.

The release will also affect other claims which are not pending before this Court. Other lawsuits have recently been filed against General Motors charging that it has violated the Magnuson-Moss Warranty Act and other laws by allegedly substituting a THM 200 transmission for a THM 350 transmission in 1977 Oldsmobiles and other General Motors automobiles. There are currently three separate lawsuits of this nature and their captions are: *Skelton* v. *General Motors Corp.*, No. 79 C 1243, United States District Court for the Northern District of Illinois; *Haskins* v. *General Motors Corp.*, No. 79 CH 1949, Circuit Court of Cook County, Illinois; and *Leonard M. Groupe P.C.* v. *General Motors Corp.*, No. 79 CH 2260, Circuit Court of Cook County, Illinois. Each of these lawsuits claims to be brought as a class action. You may be one of the individuals within one or more of the alleged classes. There has been no judicial determination as to the merits of any of those lawsuits or as to whether they are proper class actions. By accepting the Offer of Settlement and signing the Release, you will give up the right to assert, or to have asserted on your behalf, claims as described in the release regarding the transmission in your automobile, including some or all of the claims which may be asserted in the transmission lawsuits. In accepting the Offer of Settlement and signing the Release, you will *not* be required to release any claims you now have or hereafter may have against General Motors or any of its dealers arising out of any defects in the design, material, or workmanship of any kind in the transmission installed in your automobile.

HOW TO ACCEPT THE OFFER

If you decide to accept the Offer of Settlement, you must fill out the enclosed claim form and, on the reverse side, fill out and sign the Release. Once you have filled those out and returned them, a check in the amount of $200.00 will be mailed to you directly by General Motors. Provided you still own an eligible vehicle, you will also be sent the transferable insurance certificate. Upon your receipt of the check—and, if you are eligible, the certificate —the Settlement will be complete and the dismissal of claims in this action, as well as the Release of claims, as described above, will be fully and finally effective as to you.

To accept this offer, you must, within 60 days after you receive this letter, (1) complete the enclosed Claim Form, (2) complete and execute the Release which is on the back of the Claim Form, and, (3) return the Claim Form and Release to Oldsmobile Division, P.O. Box ....., Lansing, Michigan. A stamped pre-addressed envelope is enclosed for your convenience.

If there is more than one owner of the vehicle, all co-owners must sign the Release. If the owner of the vehicle is a corporation, the Release should so indicate and be appropriately acknowledged by an officer and his corporate title provided.

EFFECTS OF NOT ACCEPTING THE OFFER

If you do not accept the offer, no action by you is necessary. If you are a member of the class and you do not accept the offer, you will be bound by such future orders and dispositions as may be entered in this litigation, including any final judgment, regardless of whether they are favorable or adverse to you. Under normal circumstances, class members in cases of this type are not liable for costs of litigation.

Plaintiffs in this suit intend to pursue their claims and those of the class they represent. General Motors intends to defend this litigation and contests the Court's pretrial certification of it as a class action. This case may later be

settled or may go to trial. If it goes to trial, the losing party may appeal. The Court makes no prediction as to how or when this litigation will be finally resolved. If plaintiffs prevail, you may recover a greater or lesser amount of money than is offered to you now and the plaintiffs may recover attorneys' fees and costs. If General Motors prevails, you will receive nothing from this litigation.

In addition, there are other lawsuits pending, and other suits may later be filed, against General Motors concerning the same or related claims and you may be a party to or a class member in one or more of them. If you are a party or a class member in such other lawsuit(s), the first suit to come to a final judgment may affect your rights to proceed with and to recover any judgment in any other suit, regardless of whether the other suit is based on the same or a different legal theory. If the judgment entered in the first suit to reach a final disposition is favorable and you are awarded money damages, you may be barred from recovering any additional award in the other suit(s). If the judgment entered in the first suit to reach a final disposition is adverse to you and you are not awarded any recovery, you may be barred from obtaining any recovery that may be awarded in the other suit(s).

ADDITIONAL BACKGROUND INFORMATION

The Offer of Settlement is part of a settlement agreement concluded between General Motors and 44 state attorneys-general on December 19, 1977. Those attorneys-general either had filed or were threatening to file suits against General Motors relating to the engines used in 1977 Oldsmobiles. Those attorneys-general agreed to dismiss (or not to file) their lawsuits and to support any request by General Motors in a class action suit to communicate the Settlement Offer to eligible owners. Subject to necessary court approvals, General Motors agreed to extend the Offer of Settlement to eligible owners and to pay $150,000 to be divided among those attorneys-general in payment for expenses claimed to have been incurred

by them in connection with the subject matter of their litigation.

Any award of attorneys' fees in this litigation will ultimately be determined by the Court, and will not reduce or otherwise affect the amount being offered by General Motors to persons who choose to accept the Settlement Offer. In this regard, in six of the seven cases pending before this Court in which the class plaintiffs and their counsel have approved the Settlement Offer, General Motors has agreed not to object to petitions for attorneys' fees of no more than $60,000 for each case provided such petitions are supported by appropriate representations of counsel with respect to the work performed by them.

Some class plaintiffs and their counsel in this litigation object to the Offer of Settlement and contend that the consideration being offered by General Motors is neither fair nor adequate. These plaintiffs appealed the original preliminary approval of the settlement by this Court on behalf of the entire class. The United States Court of Appeals for the Seventh Circuit has reviewed the settlement offer and reversed the approval of the settlement as mandatory for the entire class. The Court of Appeals did, however, permit this Court to allow individual class members to decide for themselves whether they wish to accept the settlement offer and thus end their participation in this and other litigation or whether they wish instead to continue to be part of this class action.

As previously indicated in this Notice, you should clearly understand that, in permitting this Settlement Offer to be communicated, the Court expresses no opinion and makes no finding that the settlement is, or is not, fair and adequate consideration for a Release of eligible purchasers' claims. Nor does the Court express any opinion that you either should or should not accept this Offer of Settlement. The purpose of this Notice is merely to communicate the Offer of Settlement to you and allow you to make your own decision as to whether to accept or reject it.

In the event you wish to know more about the settlement agreement between the state attorneys-general and General Motors, you may inspect a copy of it which is on file at the Clerk's Office, at the address given below. The terms and conditions of this Offer of Settlement are governed by that agreement.

Separate Views of Plaintiffs
Who Object to this Settlement

Plaintiffs in some of the cases pending before this Court strongly object to the settlement offer as being inadequate to fairly compensate you for the claims which you are asked to relinquish. They believe that, if you reject the offer, you may recover an amount substantially higher than the amount of money offered to you as part of the settlement, and are asserting your right to return the car and receive the purchase price less a deduction for us.

Separate Views of Parties
Approving of this Settlement

Plaintiffs in some of the cases pending before this Court and the state attorneys-general who concluded the Settlement Agreement with General Motors, support the Settlement Offer and believe it to be a fair and reasonable offer for purposes of settlement. General Motors also supports the settlement offer as fair and reasonable, although in its view plaintiffs and class members are not entitled to any recovery in this litigation.

Inquiries

If you have any questions regarding this notice, you may address them to the persons listed below without any charge to you.

H. Stuart Cunningham
Clerk of the United States District Court
For the Northern District of Illinois,
219 South Dearborn Street
Chicago, Illinois 60604

Charles A. "Pat" Boyle
Scheele, Serkland & Boyle, Ltd.
77 West Washington Street
Chicago, Illinois 60602
(312) 368-1060
(Attorney for Plaintiffs Objecting to Settlement)

Donald G. Mulack
Special Assistant Attorney General of Illinois
℅ Michael A. Benedetto, Jr.
228 North LaSalle Street
Chicago, Illinois 60601
(312) 793-3444 or 3446
(Attorney for Plaintiffs Approving of Settlement)

You may also wish to consult with any attorney of your own choosing.

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS
By .....
H. Stuart Cunningham
Clerk of the Court

Dated: July 5, 1979.

EXHIBIT D

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

Name of Presiding Judge, Honorable Frank J. McGarr
Cause No. M.D.L. Docket No. 308
Date July 5, 1979
Title of Cause
In Re General Motors Corporation
Engine Interchange Litigation
Brief Statement of Motion
Motion for Entry of Order Approving Notice of Offer to Settle Claims
The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).
Names and Addresses of moving counsel
Thomas A. Gottschalk, Stephen C. Neal, James D. Adducci, Kirkland & Ellis, 200 E. Randolph Dr., Chicago, Il. 60601
Representing
General Motors Corporation
Name and Addresses of other counsel entitled to notice and names of parties they represent
See attached list.
(Received July 16, 1979 Charles A. Boyle)
Docketed July 6, 1979
Reserve space below for notations by minute clerk
Status hearing held. Enter order approving notice of offer to settle claims as modified. Oral motion of certain plaintiffs to include opinion of U.S.C.A., 7th Circuit in notice is denied. Oral motion of defendant to file its memorandum on summary judgment on July 6, 1979 is granted. Status hearing is continued to Sept. 21, 1979 at 2:00 p.m.
Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.
McGarr, J.

EXHIBIT E

RELEASE

In consideration of the payment to me of $200.00 by General Motors Corporation, I do hereby release and forever discharge General Motors Corporation, its subsidiaries, affiliates, directors, officers, employes, agents, successors, and franchised dealers from any and all claims which I may have against any or all of them based upon, arising out of, or relating to, the installation, incorporation, or use in any 1977 model automobile produced, manufactured, assembled, advertised, merchandised, or sold by General Motors Corporation or any of its franchised dealers of any engine, component, part, or assembly produced, manufactured, or assembled by any division or subsidiary of General Motors Corporation, or any supplier to General Motors Corporation, other than the division of General Motors Corporation which marketed or sold such automobile.

I understand that this payment is a compromise of a disputed claim, and that the payment is not to be construed as an admission of liability on the part of any persons, firms, organizations or corporations hereby released, by each of whom liability is expressly denied.

Nothing in this RELEASE shall be construed as a release, waiver, or discharge of any claims the undersigned now has, or hereafter may have, against General Motors Corporation and/or any of its franchised dealers arising out of any defect in design, material, or workmanship of any kind in any automobile produced, manufactured, assembled, advertised, merchandised, or sold by General Motors Corporation and/or any of its franchised dealers.

IN WITNESS WHEREOF, I ..... (print owner's name), have executed this RELEASE this ..... day of ....., 1978.

.....	.....
Witness	Signature of Owner
.....	.....
Witness	
	.....
	Address of Owner

EXHIBIT F

(Received July 5, 1979—Charles A. Boyle)

NUMBER 6893

COURT OF APPEAL, THIRD CIRCUIT
STATE OF LOUISIANA

JAMES F. GOUR

Plaintiff-Appellee

versus

DARAY MOTOR CO., INC. AND GENERAL MOTORS, INC.

Defendants-Appellants

Appeal from the Tenth Judicial District Court for the Parish of Natchitoches, State of Louisiana, Honorable Richard B. Williams, Judge, presiding.

Before: CULPEPPER, FORET, and DOUCET, Judges.

DOUCET, Judge.

This is an action for the annulment of a sale of an automobile and for damages. Plaintiff is the purchaser of the automobile; defendants are its manufacturer and the dealership through which it was sold. Both defendants have appealed from a judgment of the trial court, annulling the sale and awarding attorney's fees to plaintiff. For reasons which will follow, we affirm.

On February 17, 1977, plaintiff, James F. Gour, purchased a 1977 Oldsmobile Delta 83 Royale from Daray Motor Co., Inc. (hereinafter referred to as "Daray"). The total price of the sale was $8,122.65, which plaintiff satisfied by trading in a 1974 Oldsmobile and paying the balance in cash. The car had been manufactured primarily by the Oldsmobile Division of General Motors Corporation (hereinafter referred to as "General Motors"), however, the engine had been manufactured by General Motors' Chevrolet Division. The engine, designated by General Motors as an LM1 engine, had been substituted for the similar L34 engine, manufactured by Oldsmobile. The present controversy is the result of that substitution.

Plaintiff describes himself as an "Oldsmobile man", having a fondness for and familiarity with that particular make, which has developed over a period of twenty years. During that time, he has owned six other Oldsmobiles, similar to the one he purchased from Daray. Mr. Gour is

employed as a district manager for an insurance company, which requires him to drive extensively. He has come to depend on and trust Oldsmobiles to meet his driving needs. He alleges that he was unaware of the substitution of engines at the time he bought the car and that he would not have done so, had he known.

In support of that allegation, plaintiff established that there was nothing on the car or in the documents that he viewed at the time of the sale that indicated to him the true source of the car's engine. The sales invoice contained only the notation, "Engine, 350 V-8 4BBL." Although the window sticker bore General Motors' code name, LM1, its meaning was unknown to plaintiff. Furthermore, the engine's air cleaner bore an eye-catching, red and black on silver decal, which read, "Oldsmobile 350".

Defendants challenge that denial of knowledge. Mr. Tom Elkins, a salesman for Daray, testified at the trial that he recalled saying to plaintiff, as he showed him the car, "Mr. Gour, we have a 350 4-barrel engine in here, a Chevrolet engine". However, he further testified that at the time that comment was made, plaintiff was busily checking the various options on the car. Mr. Gour denied having heard such a statement by Mr. Elkins. The trial court apparently found that although the statement was actually made, Mr. Gour either did not hear it or did not grasp the import of what was said. It concluded that the knowledge of the source of the engine had not been effectively communicated to plaintiff.

The trial court held that the sale was invalid, because plaintiff's consent had been produced by error, the error being his belief that the engine had been manufactured by Oldsmobile. Although plaintiff sought damages for inconvenience caused by the allegedly poor performance of the car and for mental distress, the trial court found that he was not entitled to such damages. However, it ordered that the entire purchase price be returned to plaintiff, upon his surrendering possession and title of the car, without allowing a credit for plaintiff's use of it. It also awarded plaintiff $2,000 in attorney's fees. Both Daray and General Motors were declared bound in solido under the judgment. The court concluded that although the two

were separate legal entities, General Motors retained substantial control over Daray's actions in selling the automobiles it manufactured, and its responsibility was, therefore, parallel to Daray's.

The issues before this court are, essentially, whether or not the trial court was correct in (1) holding that the sale was invalid, (2) finding General Motors liable in solido with Daray, (3) awarding plaintiff attorney's fees, and (4) refusing to allow defendants a credit for plaintiff's use of the car.

1.

As with any other type of contract, it is essential to a contract of sale that the consent of the parties be legally given.[1] Under the proper circumstances, the consent of the parties may be vitiated by error.[2] The error complained

[1] *LSA-Civil Code Article 1779*

Art. 1779. Four requisites are necessary to the validity of a contract:

1. Parties legally capable of contracting.
2. Their consent legally given.
3. A certain object, which forms the matter of the agreement.
4. A lawful purpose.

[2] *LSA-Civil Code Article 1819*

Art. 1819. Consent being the concurrence of intention in two or more persons, with regard to a matter understood by all. reciprocally communicated, and resulting in each party from a free and deliberate exercise of the will, it follows that there is no consent, not only where the intent has not been mutually communicated or implied, as is provided in the preceding paragraph, but also where it has been produced by—

Error;

Fraud;

Violence;

Threats.

LSA-Civil Code Article 1823

Art. 1823. Errors may exist as to all the circumstances and facts which relate to a contract, but it is not every error that will invalidate it. To have that effect, the error must be in some point, which was the principal cause for making the contract, and it may be either as to the motive for making the contract, to the person with whom it is made, or to the subject matter of the contract itself.

of by plaintiff in this case is an error of fact, relating to a quality of the object of the contract, other than the principal one.[3] Therefore, the quality of the object sought by plaintiff, an engine manufactured by Oldsmobile, must have been a principal cause for his having entered into the contract. This principal cause, or motive, must have been communicated to the other party, unless it can be presumed from the circumstances that the other party knew of it.[4]

Defendants argue, initially, that there was no error, plaintiff having been informed by Mr. Elkins of the origin of the engine. As we noted earlier, the trial court found

[3] *LSA-Civil Code Article 1820*

Article 1820. Error, as applied to contracts, is of two kinds:

1. Error of fact;
2. Error of law; [.]

LSA-Civil Code Article 1821

Art. 1821. That is called error of fact, which proceeds either from ignorance of that which really exists, or from a mistaken belief in the existence of that which has none.

LSA-Civil Code Article 1844

Art. 1844. The error bears on the substantial quality of the object, when such quality is that which gives it its greatest value. A contract relative to a vase, supposed to be gold, is void, if it be only plated with that metal.

LSA-Civil Code Article 1845

Art. 1845. Error as to the other qualities of the object of the contract, only invalidates it, when those qualities are such as were the principal cause of making the contract.

[4] *LSA-Civil Code Article 1825*

Art. 1825. The error in cause of a contract to have the effect of invalidating it, must be on the principal cause, when there are several; this principal cause is called the *motive,* and means that consideration without which the contract would not have been made.

LSA-Civil Code Article 1826

Art. 1826. No error in the motive can invalidate a contract, unless the other party was appraised that it was the principal cause of the agreement, or unless from the nature of the transaction it must be presumed that he knew it.

as a fact that that information had not been effectively communicated. Given the court's reasonable evaluation of the credibility of the witnesses, we believe that the evidence as a whole supports its conclusion. Since we cannot say that the trial court was manifestly erroneous, that finding will not be disturbed. *Arceneaux* v. *Domingue*, 365 So.2d 1330 (La. 1978).

The question that remains to be answered is a two-fold one. First, would plaintiff have purchased the car, if he had known that it contained an engine that had not been manufactured by Oldsmobile? Second, can it be presumed that the seller knew of that fact? We believe that the first question must be answered in the negative and the second in the affirmative.

In view of the fact that plaintiff shopped for and purchased an Oldsmobile, rather than a Chevrolet or any other make, we find his claim that he desired an engine produced by Oldsmobile entirely reasonable. The engine, while perhaps not the single most important part of a car, is certainly one of its most major components. Equally reasonable is plaintiff's argument that the seller should be presumed to have known of his preference. The facts of this case are similar to those encountered by the court in *Ouachita Air Conditioning, Inc.* v. *Pierce*, 270 So.2d 595 (La. App. 2nd Cir. 1972). In that case, defendant had contracted with plaintiff to repair the York air conditioning system in his home. With defendant's consent, plaintiff replaced two compressors, major components of the system. However, unknown to defendant, plaintiff installed compressors produced by Amana, rather than York. The court concluded:

> "We are convinced that this case falls squarely under LSA-Civil Code Article 1845, in that there was error of fact as to the manufacturer of the unit, and that this quality was a principal cause of making the contract from defendant's standpoint. While the seller did not have actual knowledge that this was a principal cause or motive it should be presumed that he knew it from the nature of the transaction and, therefore, the test of Article 1826 is met. Although Lawler was in good faith, when he was confronted with a complete York system in which a major component needed replacing he should have been aware that without anything being said to the contrary, the buyer would expect replacement with the same brand of unit. The trial court was correct in setting aside the sale and rejecting plaintiff's demands."

General Motors would distinguish this case essentially on the basis of the fact that the manufacturer of the unit did not approve the specifications for or warrant the replacement parts. However, while it is reasonable to assume that the warranties and quality approval of the manufacturer play a part in the purchaser's choice of a product, it would be unwarranted to assume that it is the only consideration, or even that it is necessarily the primary one.

We believe that it can and should be presumed from the circumstances of this case that the seller knew that plaintiff's desire to obtain an Oldsmobile with an Oldsmobile engine was the principal cause of his entering into the contract of sale. We further believe that our conclusion is supported by the actions taken by both defendants in effecting their common purpose of selling cars. General Motors carefully concealed the source of the engine from the buying public by identifying it only with a code, which an unaided purchaser could not understand. Daray's salesman was aware of the meaning of that code and of the fact that the car contained a Chevrolet engine. However, while he apparently considered it a fact worthy of mention, only a passing comment was made, and it was made at a time when the buyer was obviously distracted.

Although the above adequately resolves the issue of the recission of the sale, we prefer to base our decision to affirm on another provision of our law, which is more directly aimed at redressing the kind of consumer complaint made by plaintiff, and which provides for more comprehensive relief. We are referring to LSA-R.S. 51:1401, et

seq., the Unfair Trade Practices and Consumer Protection Law.[5]

In broad language, LSA-R.S. 51:1405(A) declares that:

> "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

The terms "trade" and "commerce" are defined by §1402(10) as:

> "[T]he advertising, offering for sale, sale or distribution of any services and any property, corporeal or incorporeal, immovable or movable, and any other article, commodity or thing of value wherever situated, and includes any trade or commerce directly or indirectly affecting the people of this state."

It is apparent from these provisions that the business activities of General Motors and Daray are within the purview of this act, and that they are subject to the sanctions provided for therein, for any of those activities found to be in violation of the act. We believe that there has been such a violation in this case.

General Motors, on the other hand, argues that its actions, which plaintiff complains of, are exempt from the provisions of the Unfair Trade Practices and Consumer Protection Law, relying on LSA-R.S. 51:1406, which provides in part:

---

[5] The history, purpose and general provisions of this act were recently discussed by our Supreme Court in its opinion on rehearing in *State ex rel. Guste* v. *General Motors Corporation,* ..... So.2d ..... (La. 1979), docket no. 61840, decided April 9, 1979. That case is a class action, brought by the Attorney General in behalf of all plaintiffs aggrieved in the same manner as the plaintiff in this case. It does not preclude us from granting the individual relief sought by plaintiff, however. The court specifically recognized the right of affected consumers, who wished to control their own litigation, to withdraw from the class action. We are of the opinion that Mr. Gour opted out of the class action in this case by filing this separate suit. See *Williams* v. *State,* 350 So.2d 131 (La. 1977).

> "The provisions of this chapter shall not apply to: (4) Any conduct which complies with section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C., 45(a)(1)], as from time to time amended, any rule or regulation promulgated thereunder and any finally adjudicated court decision interpreting the provisions of said Act, rules and regulations."

It argues that its conduct complies with and is sanctioned by the Federal Trade Commission Act, citing *In The Matter of General Motors Corp.,* 53 F.T.C. 1239 (1957).

The latter action was initiated by the Federal Trade Commission, which charged General Motors with committing a fraudulent and deceptive trade practice. The activity complained of was General Motors' advertising automotive replacement parts as "Genuine Chevrolet Parts", when they were manufactured by outside vendors, rather than by any division of General Motors. That advertising was alleged to be false and deceptive. After a hearing on the matter, the F.T.C. dismissed the complaint, holding that the parts were as much genuine parts as those made in General Motors' own plant, because they were made according to its specifications and tested, approved and warranted by it.

We see a great deal of difference between replacement parts, used for maintenance purposes, and a major component part of a new car, such as the engine. Our view is apparently shared by the F.T.C., which has brought another complaint against General Motors, based in part on its substitution of engines in the manner complained of in the present case. See *In The Matter of General Motors Corp.,* ..... F.T.C. ....., No. 772-3031, decided June 21, 1978. In response to that complaint, General Motors has entered into an agreement containing a consent order to cease and desist, among other things, misrepresenting the manufacturing source of any engine option. Under the order, General Motors is specifically prohibited from displaying the name of a particular General Motors division on the air filter cover of the engine, unless the engine was manufactured by that division. While the latter

agreement provides that it is not an admission by General Motors that the law has been violated, we believe that the complaint, together with the agreement, casts considerable doubt on General Motors' assertion that its activities are sanctioned by the Federal Trade Commission Act.

That doubt is further reinforced by the opinion of the court in *In Re General Motors Corporation Engine Interchange Litigation* v. *General Motors Corporation,* ..... F.2d ..... (7th Cir. 1979), docket no. 78-2036, decided February 26, 1979. The posture of that case was similar to that in *State ex rel. Guste* v. *General Motors Corporation,* ..... So.2d ..... (La. 1979), docket no. 61840, decided April 9, 1979, in that the issue was procedural, and the court, therefore, did not rule definitely on the merits of the case. The issue was the propriety of a subclass settlement in a federal class action. The class action was founded on consumer complaints about the substitution of engines as in this case. In considering the fairness of the settlement, the court found it necessary to examine the strength of the plaintiffs' case against General Motors. At footnote 44 of the court's opinion, it stated:

> "We think the objectors presented substantial evidence tending to show that GM deliberately concealed the source of the engines in the cars that it sold as Oldsmobiles and that it did so to increase profits."

The court's discussion as a whole strongly suggests to us that the activities in question are in violation of the Federal Trade Commission Act and other federal laws.

That conclusion is not surprising in view of the fact that the federal courts have consistently condemned trade activities calculated to deceive the buying public. For example, see the court's opinion in *Alfred Dunhill Ltd.* v. *Interstate Cigar Co.,* 449 F.2d 232 (2nd Cir. 1974), in which it said:

> "The courts have agreed with the Commission's interpretation of the Commission's power under the Federal Trade Act and have typically held that:

> '[F]ailure to disclose or mark or label material facts concerning merchandise, which, if known to prospective purchasers, would influence their decisions of whether or not to purchase, is an unfair trade practice violative of §5 of the Federal Trade Commission Act, Haskelite Manufacturing Corp. v. Federal Trade Commission, 7 Cir., 127 F.2d 765, . . .'
>
> L. Heller & Son v. Federal Trade Commission, 191 F.2d 954, 956 (7th Cir. 1951). See also Ward Laboratories, Inc. v. Federal Trade Commission, 276 F.2d 952 (2d Cir. 1960)."

We find General Motors' argument that its activities are sanctioned by federal law untenable, when balanced against the weight of these authorities.

In considering the question of what constitutes a violation of LSA-R.S. 51:1405(A), the court in *Guste* v. *Demars,* 330 So.2d 123 (La. App. 1st Cir. 1976), said the following:

> "The substantive prohibition of the Unfair Trade Practices and Consumer Protection Law is broad and does not specify particular violations. . . . The language of this section tracks closely that of the Federal statute, 15 U.S.C. Section 45(a). Because of the variety of possible unfair and deceptive practices, the Federal statute was intentionally broadly written, leaving the determination of individual violations to the Commission and the courts. Our legislature has expressed a similar intention in patterning our law so closely on the Federal statute. Therefore, we may and should consider interpretations of the Federal courts and of the Commission relative to such similar statutes to adjudge the scope and application of our own statute. State, through Dept. of Highways v. Braddock, 170 So.2d 5 (La. App. 1st Cir. 1964)."

We agree that the federal authorities set out above are proper sources for guidance in deciding whether or not there has been an infraction of our law.

We do not base our conclusion that there has been a violation of the Unfair Trade Practices and Consumer

Protection Law on a determination that federal law has been transgressed, however. We do not find it necessary to do so, because we believe that the conduct of the defendants in this case is of the kind that our own legislature has declared unlawful. General Motors deliberately took measures, such as putting the decal on the air cleaner, which were calculated to lead plaintiff to believe that he was purchasing a car that contained an Oldsmobile engine. Daray became a party to that misrepresentation when it failed to adequately disclose the true source of the engine, and it profited from the deception, as well. Therefore, we hold that there has been a violation of LSA-R.S. 51:1405 (A).

LSA-R.S. 51:1409(A) provides that any person, who suffers a loss of money or movable property as a result of a practice violative of 1405(A) may bring a private action, individually, but not in a representative capacity, to recover "actual damages". Recently, our supreme court in *State ex rel. Guste* v. *General Motors Corporation,* supra, upheld a decision of the Fourth Circuit in which the term "actual damages" was interpreted to mean "relief other than the refund of the purchase price and the return of the status quo that constitutes restitution". As noted earlier, that case was concerned with a class action brought by the Attorney General. The court held that such an action is permissible, provided that it is limited to restitutionary recovery, in view of the prohibition contained in §1409(A).

Justice Marcus points out in his dissenting opinion that the majority's interpretation could lead to the conclusion that §1409(A) allows a private action for the recovery of other damages, but precludes recovery in restitution. We agree with him that the legislature did not intend such a result. Moreover, we do not believe that such a result must necessarily follow from the position taken by the majority.

It can be argued that because the legislature specifically provided for the recovery of actual damages in a private action, it intended to prohibit all other types of recovery.

However, that argument ignores the fact that in enacting §1409(A), the legislature included a rather strong incentive for injured consumers to invoke private litigation. It provides for the recovery of treble damages, if an unfair or deceptive practice is used after the offending party is put on notice by the director of the Governor's Consumer Protection Division or the Attorney General. It also provides for the recovery of reasonable attorney's fees and costs incurred in bringing a private action. That incentive would be greatly diminished if the plaintiff was prohibited from seeking restitution.

As the majority of our supreme court noted, a class action may be of great utility to injured consumers, even though their individual recovery is limited to restitution. A legislative intent to provide for such an action is understandable. The same cannot be said, however, of a private action in which the plaintiff is prohibited from recovering for what may be the major portion of his loss. We believe that it was the intent of the legislature to allow restitutionary recovery as well as the recovery of other damages under LSA-R.S. 51:1409(A) and that plaintiff in this case is entitled to the return of the purchase price.

2.

General Motors correctly argues that the trial court erred in holding it solidarily liable with Daray on the basis of its supposed control over the actions of Daray. There is no evidence, whatsoever, in the record to support such a conclusion. However, we have determined that General Motors is guilty of activities which are unfair and deceptive trade practices within the meaning of LSA-R.S. 51:1405(A). Those practices combined with Daray's failure to disclose the origin of the engine to produce the injury of which plaintiff complains. General Motors is, therefore, equally responsible for producing the harm that was done.

Under these circumstances, we can see no difference between the positions of the defendants and those of point tort-feasors under LSA-Civil Code Article 2315, nor can

we see any reason why they should be treated differently. Under our law, joint tort-feasors are solidarily liable. LSA-Civil Code Articles 2103, 2324; *Mullin* v. *Skains,* 252 La. 1009, 215 So.2d 643 (1968); *Cavalier* v. *City of New Orleans,* 273 So.2d 303 (La. App. 4th Cir. 1973), writ denied, 275 So.2d 781 (La. 1973). Therefore, we hold that General Motors is liable in solido with Daray.

3.

Since we have found that defendants have violated the Unfair Trade Practices and Consumer Protection Law, we find it unnecessary to discuss the numberous arguments raised by defendants on the issue of attorney's fees. LSA-R.S. 51:1409(A) provides that reasonable attorney's fees shall be awarded in the event that damages are awarded under that section. In view of the complex nature of this litigation and the amount of time spent by plaintiff's attorney in court, the award of $2,000 is certainly not unreasonably high.

Plaintiff's attorney has asked by way of a reply brief filed on February 16, 1979 that the award for attorney's fees be increased to $3,500. LSA-C.C.P. Art. 2133 provides that if an appellee desires to have a judgment modified or revised, he must file an answer to the appeal, stating the relief demanded, not later than fifteen days after the return day or the lodging of the record, whichever is later. The later date in this case was the lodging of the record, which occurred on October 11, 1978. Accordingly, even if plaintiff's request could be construed as an answer to the appeal, it obviously was not timely filed. Since this procedural requirement has not been met, we are not at liberty to grant the increase prayed for, despite the obvious merit of that request under the facts.

4.

By the time of the trial, plaintiff had had the possession and use of the 1977 Oldsmobile for fourteen and one-half months. During that time, the car was driven approximately 17,000 miles. Defendants argue that they should be given a credit for that use. It was stipulated that the

rental value of the car was $179.00 per month. Thus, the amount sought in credit is $2,595.50.

We agree that defendants must be allowed a credit for plaintiff's use of the car. As this court said in *Nugent* v. *Stanley,* 336 So.2d 1058 (La. App. 3rd Cir. 1976),

> "When a sale is rescinded the parties are returned as nearly as possible to the situation as it existed prior to the sale. The vendee returns the property to the vendor and the vendor returns the purchase price subject to whatever adjustments are necessary for his use of the property during the period he possessed same. Jones v. Deloach, 317 So.2d 240 (La. App. 2nd Cir. 1975)."

True restitution cannot be achieved in a case such as this without allowing for the buyer's use of the car.

We cannot agree with the method of computing the credit proposed by defendants, however. $179.00 per month represents the amount that a bona fide lessee would have been charged for the use of the car. Presumably a profit would have been made on such a transaction. Under the circumstances of this case, defendants are not entitled to profit from plaintiff's use of the car. Recently, in the case of *Robertson* v. *Jimmy Walker Chrysler-Plymouth,* 368 So.2d 747 (La. App. 3rd Cir. 1979), writs denied June 1, 1979, which also involved the dissolution of a sale of an automobile, we held that $.08 per mile was a proper credit to be allowed against the purchase price for the buyer's use of the car. Applying that method of computation to the present case, we have determined that defendants are entitled to a credit of $1,360 for the 17,000 miles that the car had been driven.

For the reasons set forth herein, the judgment of the trial court is amended to allow defendants, Daray Motor Co., Inc. and General Motors Corporation a credit in the amount of $1,360. In all other respects the judgment of the trial court is affirmed. All costs of this appeal are assessed against defendants.

AMENDED AND AFFIRMED.

EXHIBIT G

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
July 26, 1979

Before
Hon. THOMAS E. FAIRCHILD, Chief Judge
Hon. LUTHER M. SWYGERT, Circuit Judge
Hon. HARLINGTON WOOD, JR., Circuit Judge

No. 79-1819
BETTY OSWALD, EILEEN MILLER, PHIL MILLER
and MICHAEL BALOG, on behalf
of themselves and all other similarly situated,
Petitioners,

vs.

FRANK J. McGARR, U.S. District Judge,
Northern District of Illinois,
Respondent.

No. 79-1843
IN RE GENERAL MOTORS CORPORATION
ENGINE INTERCHANGE LITIGATION,

vs.

APPEAL OF: BETTY OSWALD, on her behalf and on behalf of all others similarly situated, et al.

Appeals from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. MDL 308
FRANK J. McGARR, *Judge.*

This matter comes before the court for its consideration upon the filing of the following documents:

1. The "MOTION TO STAY TRANSMITTAL OF THE OFFER OF SETTLEMENT" filed herein on July 26, 1979, by counsel for the plaintiffs.

2. The "RESPONSE OF PLAINTIFF-PROPONENT STATE OF ILLINOIS TO PLAINTIFFS-OBJECTORS MOTION TO STAY TRANSMITTAL OF THE OFFER OF SETTLEMENT" filed herein on July 26, 1979, by counsel for plaintiff-proponent.
3. The "OPPOSITION OF GENERAL MOTORS CORPORATION TO MOTION TO STAY TRANSMITTAL OF THE OFFER OF SETTLEMENT" filed herein on July 26, 1979, by counsel for the respondent, General Motors Corporation.
4. The "MEMORANDUM IN SUPPORT OF PLAINTIFF-OBJECTORS MOTION TO STAY TRANSMITTAL OF THE OFFER OF SETTLEMENT" filed herein on July 26, 1979, by counsel for plaintiffs-appellants.
5. The "PETITION FOR WRIT OF MANDAMUS" filed herein on July 26, 1979, by counsel for the petitioners.

Pending resolution of the jurisdictional and merits issues in the above entitled proceedings, the mailing of the "Notice of Offer to Settle Claims" is hereby stayed and enjoined, except that the stay and injunction may be terminated if the notice is modified so as:

1. To include an express statement that "This offer can be accepted by any eligible individual without regard to acceptance or rejection by other eligible individuals. If you accept the offer, you will be bound by your acceptance whether others do or do not accept."
2. To include in one or more appropriate places an express statement that "An example of the type of claim which was not before the district court in this lawsuit, but which you will release by accepting this offer, is a claim for substitution of any other power train components." Appropriate places for

this or a similar statement appear to be: (a) at the bottom of page 3; (b) at the bottom of page 5; and (c) at the top of page 7.

We leave the approval of the exact wording and the choice of location to the district court, and upon approval of the district court, this stay and injunction shall terminate without further order of this court, whether or not the above entitled proceedings, or either of them, remain pending.

IT IS ALSO ORDERED that the consideration of the "Petition for Writ of Mandamus" filed on July 23, 1979, and docketed in Appeal No. 79-1819 is hereby consolidated with the appeal docketed in 79-1843. Respondents shall file a response to the "Petition for Writ of Mandamus" on or before August 16, 1979.

EXHIBIT H

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MDL DOCKET NO. 308

IN RE GENERAL MOTORS CORPORATION
ENGINE INTERCHANGE LITIGATION

NOTICE OF OFFER TO SETTLE CLAIMS

This Notice is directed to each original owner (other than General Motors franchised dealers) of a 1977 model Oldsmobile who satisfies both of the following two conditions.

1. The owner must have entered into a written purchase contract, dated on or before April 10, 1977, with a General Motors franchised dealer or his representative for a new and unused 1977 Oldsmobile; and,

2. Such 1977 Oldsmobile must have been delivered to the owner equipped with a V-8 engine produced in a General Motors plant operated by the Chevrolet Motor Division of General Motors.

If you meet both of these conditions, you should carefully read this Notice in its entirety, and make sure you understand it before taking any action based upon it. If you do not meet both conditions, this Notice is not directed to you, and you should disregard it.

OFFER TO SETTLE CLAIMS

This Notice communicates an Offer of Settlement of $200 and transferable mechanical insurance coverage, as described below, which is being made by General Motors Corporation, a defendant in this and other litigation concerning 1977 Oldsmobiles equipped with Chevrolet produced V-8 engines. If you meet both conditions above, then you are eligible to consider the Offer of Settlement.

This Notice describes the Settlement being offered, the claims being asserted against General Motors and the effects on your rights of either accepting or rejecting the Offer of Settlement. You may have received an earlier notice from the Clerk of the Court dated March 16, 1978. The description of the Settlement Offer and the effects of accepting it are as set forth in this Notice, and you should disregard the description provided in the earlier notice.

In allowing this Notice to be communicated, the Court does not indicate any opinion or finding that the Settlement described below is fair or adequate. Nor does the Court express any opinion that you should either accept or reject this Offer of Settlement. [This offer can be accepted by an eligible individual without regard to acceptance or rejection by other eligible individuals. If you accept the offer, you will be bound by your acceptance whether others do or do not accept.]

DESCRIPTION OF THIS LITIGATION

In this class action litigation, plaintiffs are alleging, on behalf of themselves and the class they represent, that General Motors violated the Magnuson-Moss Warranty Act, a federal statute, by failing to disclose that the 1977 model Oldsmobiles which they purchased were equipped with V-8 engines produced in General Motors plants operated by its Chevrolet Motor Division. Plaintiffs allege that there is a difference in the quality and value of the Chevrolet and Oldsmobile engines. Plaintiffs are seeking both compensatory and punitive damages, as well as rescission and other equitable relief including replacement of the engines. They also are seeking attorneys' fees and costs incurred in the litigation.

General Motors denies plaintiffs' allegations and asserts that the Chevrolet engines were comparable to the Oldsmobile engines in all material respects and they met General Motors' engineering standards, and further that its conduct has been lawful in all respects. General Motors has asked that the actions be dismissed and that plaintiffs and class members recover nothing.

The only issues before the Court raised by complaints and certified by the Court for the class action pertain to the alleged substitution of engines. No trial has been conducted, and the Court has made no decision concerning the claims of the plaintiffs. Therefore, this Notice should not be interpreted as an opinion of any kind about the validity of any of the claims or defenses being asserted in this litigation.

Plaintiffs also contend that General Motors substituted other power train components, including transmissions and rear drive axles, in place of components allegedly warranted as being standard equipment on those Oldsmobiles. Claims relating to other components including transmissions and rear drive axles are not pending before this Court for adjudication in this litigation. [An example of the type of claim which was not before the district court in this lawsuit, but which you will release by accepting this offer, is a claim for substitution of any other power train components.]

TERMS OF OFFER TO SETTLE

In return for a Release of claims, General Motors offers you a cash payment of $200 and, if eligible, transferable mechanical insurance coverage, as explained below.

Cash Payment

General Motors offers to you, as an eligible original owner of a 1977 Oldsmobile, the total sum of $200.00.

Transferable Mechanical Insurance Coverage

If you still own your eligible 1977 Oldsmobile described above, General Motors also offers you transferable mechanical insurance coverage in the form of a special Mechanical Performance Certificate underwritten by Motors Insurance Corporation covering the power train (engine, transmission, and drive axle) of your 1977 Oldsmobile automobile for 36 months or 36,000 miles from the date of original delivery of that automobile to you, whichever occurs first. Many of you already have received free from

General Motors a non-transferable version of the Special Mechanical Performance Certificate which otherwise offers identical coverage.

If you no longer own your eligible 1977 Oldsmobile described above, General Motors also offers you the transferable mechanical insurance coverage on any one 1977 model General Motors passenger automobile of which you are still the original owner. The mechanical insurance coverage commences from the date of delivery of the insured automobile to you. If you do not still own the eligible 1977 Oldsmobile or another eligible 1977 General Motors passenger automobile as described above, you will not receive the insurance coverage and certificate.

Some of you who are eligible to receive the insurance certificate may previously have purchased a mechanical insurance policy or mechanical service contract covering your 1977 Oldsmobile or other eligible 1977 General Motors automobile which may still be in effect. The protection offered under those policies or contracts may be different from the protection afforded by the Special Mechanical Performance Certificate offered as part of this Settlement. The protection afforded by each policy or contract must be determined by reference to its particular terms and conditions. Similarly, in the event there are questions about any cancellation or refund rights relating to such policy or contract, such rights are determined by reference to the terms of the particular policy or contract.

The Release

In return for the above described cash payment and, if eligible, insurance certificate, each of you who wishes to accept the offer must sign a Release of claims. The Release you will be required to sign should you choose to accept this Offer of Settlement is enclosed with this Notice. *Once signed, the Release will significantly and finally affect your legal rights. You should note that the release covers claims which are not pending before the Court in this litigation, as well as claims which are before the Court. You should therefore read the Release, and the discussion of*

the Release which follows, very carefully. [An example of the type of claim which was not before the district court in this lawsuit, but which you will release by accepting this offer, is a claim for substitution of any other power train components.]

EFFECTS OF SIGNING THE RELEASE

The Release will release General Motors, its subsidiaries, affiliates, directors, officers, employees, successors and its independent franchised dealers from any and all claims which you may have now or in the future based upon, arising out of, or relating to, the installation, incorporation, or use in any 1977 model automobile produced, manufactured, assembled, advertised, merchandised, or sold by General Motors or any of its franchised dealers of any engine, component, part, or assembly produced, manufactured, or assembled by any division or subsidiary of General Motors, or any supplier to General Motors other than the division of General Motors which marketed or sold such automobile.

If you choose to accept the Offer of Settlement, you will *not* be required to release any claims you now have or hereafter may have against General Motors or any of its dealers arising out of any defects in the design, material or workmanship of any kind in their automobiles.

The Release will permanently and forever bar you, if you accept the Offer of Settlement, from any future or further recovery for claims being asserted in this litigation, and your claims will be dismissed with prejudice by this Court. The Release will also permanently and forever bar you from suing or recovering on *all claims* covered by it, regardless of whether those claims arise under federal, state or common law and regardless of whether or not those claims are presently, or may later be, the subject of this or any other pending or future litigation brought by you or on your behalf. [An example of the type of claim which was not before the district court in this lawsuit, but which you will release by accepting this offer, is a claim for substitution of any other power train com-

ponents.] By accepting the Offer of Settlement and signing the Release, you will have no right whatsoever to participate in or receive part of a later recovery, if any, against General Motors or its dealers, whether by judgment, settlement or otherwise, and regardless of whether such recovery may be more favorable than this Offer of Settlement.

General Motors is currently aware of litigation pending in California, Connecticut, Florida, Louisiana, Minnesota, Missouri, New Jersey, Ohio, Oregon and Texas, in which the complaints filed with the courts include class action allegations on behalf of certain residents of those states who purchased 1977 Oldsmobile automobiles and received such automobiles equipped with V-8 engines produced in a plant operated by the Chevrolet Motor Division. The caption of the lawsuit that is pending in [state] is: [caption to be inserted in notices sent to residents of state in which action is pending.] By accepting the Offer of Settlement and signing the Release, you will have no right whatsoever to participate in or receive part of a later recovery, if any, against General Motors or its dealers in such state action.

The release will also affect other claims which are not pending before this Court. Other lawsuits have recently been filed against General Motors charging that it has violated the Magnuson-Moss Warranty Act and other laws by allegedly substituting a THM 200 transmission for THM 350 transmission in 1977 Oldsmobiles and other General Motors automobiles. There are currently three separate lawsuits of this nature and their captions are: *Skelton* v. *General Motors Corp.,* No. 79 C 1243, United States District Court for the Northern District of Illinois; *Haskins* v. *General Motors Corp.,* No. 79 CH 1949, Circuit Court of Cook County, Illinois; and *Leonard M. Groupe P.C.* v. *General Motors Corp.,* No. 79 CH 2260, Circuit Court of Cook County, Illinois. Each of these lawsuits claims to be brought as a class action. You may be one of the individuals within one or more of the alleged classes. There has been no judicial determination as to the merits of any

of those lawsuits or as to whether they are proper class actions. By accepting the Offer of Settlement and signing the Release, you will give up the right to assert, or to have asserted on your behalf, claims as described in the release regarding the transmission in your automobile, including some or all of the claims which may be asserted in the transmission lawsuits. In accepting the Offer of Settlement and signing the Release, you will *not* be required to release any claims you now have or hereafter may have against General Motors or any of its dealers arising out of any defects in the design, material, or workmanship of any kind in the transmission installed in your automobile.

HOW TO ACCEPT THE OFFER

If you decide to accept the Offer of Settlement, you must fill out the enclosed claim form and, on the reverse side, fill out and sign the Release. Once you have filled those out and returned them, a check in the amount of $200.00 will be mailed to you directly by General Motors. Provided you still own an eligible vehicle, you will also be sent the transferable insurance certificate. Upon your receipt of the check—and, if you are eligible, the certificate —the Settlement will be complete and the dismissal of claims in this action, as well as the Release of claims, as described above, will be fully and finally effective as to you.

To accept this offer, you must, within 60 days after you receive this letter, (1) complete the enclosed Claim Form, (2) complete and execute the Release which is on the back of the Claim Form, and, (3) return the Claim Form and Release to Oldsmobile Division, P.O. Box ....., Lansing, Michigan. A stamped pre-addressed envelope is enclosed for your convenience.

If there is more than one owner of the vehicle, all co-owners must sign the Release. If the owner of the vehicle is a corporation, the Release should so indicate and be appropriately acknowledged by an officer and his corporate title provided.

EFFECTS OF NOT ACCEPTING THE OFFER

If you do not accept the offer, no action by you is necessary. If you are a member of the class and you do not accept the offer, you will be bound by such future orders and dispositions as may be entered in this litigation, including any final judgment, regardless of whether they are favorable or adverse to you. Under normal circumstances, class members in cases of this type are not liable for costs of litigation.

Plaintiffs in this suit intend to pursue their claims and those of the class they represent. General Motors intends to defend this litigation and contests the Court's pretrial certification of it as a class action. This case may later be settled or may go to trial. If it goes to trial, the losing party may appeal. The Court makes no prediction as to how or when this litigation will be finally resolved. If plaintiffs prevail, you may recover a greater or lesser amount of money than is offered to you now and the plaintiffs may recover attorneys' fees and costs. If General Motors prevails, you will receive nothing from this litigation.

In addition, there are other lawsuits pending, and other suits may later be filed, against General Motors concerning the same or related claims and you may be a party to or a class member in one or more of them. If you are a party or a class member in such other lawsuit(s), the first suit to come to a final judgment may affect your rights to proceed with and to recover any judgment in any other suit, regardless of whether the other suit is based on the same or a different legal theory. If the judgment entered in the first suit to reach a final disposition is favorable and you are awarded money damages, you may be barred from recovering any additional award in the other suit(s). If the judgment entered in the first suit to reach a final disposition is adverse to you and you are not awarded any recovery, you may be barred from obtaining any recovery that may be awarded in the other suit(s).

ADDITIONAL BACKGROUND INFORMATION

The Offer of Settlement is part of a settlement agreement concluded between General Motors and 44 state attorneys-general on December 19, 1977. Those attorneys-general either had filed or were threatening to file suits against General Motors relating to the engines used in 1977 Oldsmobiles. Those attorneys-general agreed to dismiss (or not to file) their lawsuits and to support any request by General Motors in a class action suit to communicate the Settlement Offer to eligible owners. Subject to necessary court approvals, General Motors agreed to extend the Offer of Settlement to eligible owners and to pay $150,000 to be divided among those attorneys-general in payment for expenses claimed to have been incurred by them in connection with the subject matter of their litigation.

Any award of attorneys' fees in this litigation will ultimately be determined by the Court, and will not reduce or otherwise affect the amount being offered by General Motors to persons who choose to accept the Settlement Offer. In this regard, in six of the seven cases pending before this Court in which the class plaintiffs and their counsel have approved the Settlement Offer, General Motors has agreed not to object to petitions for attorneys' fees of no more than $60,000 for each case provided such petitions are supported by appropriate representations of counsel with respect to the work performed by them.

Some class plaintiffs and their counsel in this litigation object to the Offer of Settlement and contend that the consideration being offered by General Motors is neither fair nor adequate. These plaintiffs appealed the original preliminary approval of the settlement by this Court on behalf of the entire class. The United States Court of Appeals for the Seventh Circuit has reviewed the settlement offer and reversed the approval of the settlement as mandatory for the entire class. The Court of Appeals did, however, permit this Court to allow individual class members to decide for themselves whether they wish to accept the settlement offer and thus end their participation in this and other litigation or whether they wish instead to continue to be part of this class action.

As previously indicated in this Notice, you should clearly understand that, in permitting this Settlement Offer to be communicated, the Court expresses no opinion and makes no finding that the settlement is, or is not, fair and adequate consideration for a Release of eligible purchasers' claims. Nor does the Court express any opinion that you either should or should not accept this Offer of Settlement. The purpose of this Notice is merely to communicate the Offer of Settlement to you and allow you to make your own decision as to whether to accept or reject it.

In the event you wish to know more about the settlement agreement between the state attorneys-general and General Motors, you may inspect a copy of it which is on file at the Clerk's Office, at the address given below. The terms and conditions of this Offer of Settlement are governed by that agreement.

Separate Views of Plaintiffs
Who Object to this Settlement

Plaintiffs in some of the cases pending before this Court strongly object to the settlement offer as being inadequate to fairly compensate you for the claims which you are asked to relinquish. They believe that, if you reject the offer, you may recover an amount substantially higher than the amount of money offered to you as part of the settlement, and are asserting your right to return the car and receive the purchase price less a deduction for use.

Separate Views of Parties
Approving of this Settlement

Plaintiffs in some of the cases pending before this Court and the state attorneys-general who concluded the Settlement Agreement with General Motors, support the Settlement Offer and believe it to be a fair and reasonable offer for purposes of settlement. General Motors also supports the settlement offer as fair and reasonable, although in its view plaintiffs and class members are not entitled to any recovery in this litigation.

Inquiries

If you have any questions regarding this notice, you may address them to the persons listed below without any charge to you.

H. Stuart Cunningham
Clerk of the United States District Court
For the Northern District of Illinois,
219 South Dearborn Street
Chicago, Illinois 60604

Charles A. "Pat" Boyle
Scheele, Serkland & Boyle, Ltd.
77 West Washington Street
Chicago, Illinois 60602
(312) 368-1060
(Attorney for Plaintiffs Objecting to Settlement)

Donald G. Mulack
Special Assistant Attorney General
of Illinois
c/o Michael A. Benedetto, Jr.
228 North LaSalle Street
Chicago, Illinois 60601
(312) 793-3444 or 3446
(Attorney for Plaintiffs Approving of Settlement)

You may also wish to consult with any attorney of your own choosing.

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS
By .....
H. Stuart Cunningham
Clerk of the Court

Dated: July 5, 1979.

EXHIBIT I

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Received July 31, 1979, Charles A. Boyle)

Name of Presiding Judge, Honorable Frank J. McGarr
Cause No. MDL Docket No. 308
Date 7/27/79

Title of Cause
IN RE: GENERAL MOTORS CORPORATION ENGINE INTERCHANGE LITIGATION

Brief Statement of Motion
EMERGENCY MOTION OF DEFENDANT GENERAL MOTORS CORPORATION FOR ORDER APPROVING REVISED NOTICE OF OFFER TO SETTLE CLAIMS

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel

Thomas A. Gottschalk, Stephen C. Neal, James D. Adducci
Kirkland & Ellis 200 East Randolph Drive, Chicago, Illinois 60601

Representing
General Motors Corporation

Names and Addresses of other counsel entitled to notice and names of parties they represent
See Attached List

Docketed July 27, 1979

Reserve space below for notations by minutes clerk

Emergency motion of defendant General Motors Corporation for order approving revised notice of offer to settle claims is heard. Revised notice of offer to settle claims is approved.

Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

McGarr, J.